CIVIL AERONAUTICS JOURNAL

ISSUED TWICE MONTHLY BY THE CIVIL AERONAUTICS AUTHORITY

VOLUME 1 WASHINGTON, JULY 15, 1940 NUMBER 14

HINCKLEY NAMED ASSISTANT SECRETARY OF COMMERCE

Colonel Connolly New Administrator of Civil Aeronautics—Branch Heads Board, Warner Named Vice Chairman, and Baker New Fifth Member

Robert H. Hinckley, former Chairman of the Civil Aeronautics Authority, on July 8 was sworn in as Assistant Secretary of Commerce. In his new post Hinckley will be responsible for the Civil Aeronautics Authority and the Weather Bureau. Both of these agencies were transferred to the Department by recent reorganization orders.

Hinckley had served as Chairman of the C. A. A. since April 12, 1939, when he was named to succeed Edward J. Noble, who became Executive Assistant to the Secretary of Commerce, and later was made Under Secretary. Hinckley had been a member of the Authority since its creation in the summer of 1938.

Coming to the C. A. A. from the position of Assistant Administrator of the Works Progress Administration, Hinckley had been in charge of W. P. A. activities in the West and had played an important part in the development of aeronautics in that section of the country. He is a native of Utah.

Col. Donald H. Connolly of the United States Army Engineers was named Administrator of Civil Aeronautics. He succeeds to the position vacated by Clinton M. Hester, who resigned to reenter private law practice.

Colonel Connolly, a native of Arizona, graduated from West Point in the class of 1910. He had served as district engineer of the Memphis river and harbor district and the Chicago river and harbor district. He was Director of the Civil Works Administration in Los Angeles in 1934, and from 1935 to 1939 was Administrator of the Works Progress Administration for southern California. For the last year and a half, he had been in command of the Second Engineers of the Army.

Harllee Branch, a member of the Authority since its creation and former Second Assistant Postmaster General, was named new chairman of the Civil Aeronautics Board, succeeding Hinckley. A native of North Carolina, Branch, after more than 30 years of newspaper experience in the South and in Washington, joined the Government service as Executive Assistant to the Postmaster General in March 1933.

Edward P. Warner, who came to the Authority in January of last year, was named vice chairman of the Board, succeeding Branch. He first served as economic and technical adviser, and on April 12, 1939, was appointed a member of the Authority. Warner has for more than 20 years been active as engineer, editor, consultant in the economies of air transport, Government official, teacher, director of aerodynamic research, and student of the aeronautical arts and sciences.

George P. Baker, former associate professor of transportation at Harvard University, was appointed to the vacancy on the Board. Baker has had extensive transportation experience, both as a professor and consultant for financial houses and a number of the Nation's largest railroads. He became an instructor in economics at Harvard in 1928, and since 1939 has been teaching courses in air transportation and water transportation in the Graduate School of Business Administration

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Jerome Lederer Heads New Air Safety Unit

The Civil Aeronautics Authority on June 19 announced the appointment of Jerome Lederer as Director of the new Safety Bureau which took over the functions of the Air Safety Board on July 1.

Mr. Lederer, a native of New York City, is a graduate of the College of Engineering of the New York University. In 1924 he received the David Orr prize at that institution for excellence in professional subjects and after graduation remained as assistant in the Department of Aeronautical Engineering, receiving his M. E. degree in 1925.

See LEDERER, page 307

Frizzell Resigns, Early Named Acting Secretary of Civil Aeronautics Board

The Civil Aeronautics Authority on June 19 announced the resignation of Paul J. Frizzell, Executive Secretary and Coordinator. Mr. Frizzell, who has served as Secretary and Coordinator since the establishment of that office in 1938, planned to remain on duty until plans for reorganizing the Authority under the Third and Fourth Reorganization Acts were completed and the new organization put into operation. At the same time the Authority announced that Thomas G. Early, formerly Administrative Assistant to Col. Sumpter Smith, Chairman of the Interdepartmental Commission in Charge of the Construction of the Washington National Airport, would be made a consultant to the Civil Aeronautics Board and designated as Acting Secretary.

Mr. Early, a native of North Dakota, is a graduate of Yale University and holds a masters degree of Economics from the University of Pittsburgh. From June 1933 to September 1935 he held various administrative posts in the National Recovery Administration, leaving to accept a post as Advertising Manager for the Sharples Specialty Co., Philadelphia. He reentered governmental service in 1937 serving as Special Assistant to the Administrator of the National Unemployment Census until June 1938 when he was appointed to his present position.

C. A. A. REORGANIZATION PLANS EFFECTED JULY 1

Division of Functions of New Board and Administrator Under Commerce Department Defined

Since the division of functions of the Civil Aeronautics Authority effected by the reorganization might not be clearly understood in every instance, the following explanation is provided for the benefit of those who deal closely with the Authority.

Reorganization Plans Nos. III and IV, transmitted by the President to the Congress in April of this year under the Reorganization Act of 1939, became effective on June 30, 1940. The future division of certain functions between the Civil Aeronautics Board (the present name of the old five-member Authority) the Administrator of Civil Aeronautics, and the Secretary of Commerce, as effected by the above-mentioned Reorganization Plans, is here described.

Under the Civil Aeronatutics Act of 1938, the Civil Aeronautics Authority was an independent agency composed of the five-member Authority, the Administrator, and the three-member Air Safety Board.

Previously the functions of the five-member Authority were largely regulatory in character and covered substantially the entire field of civil aeronautics. It had the responsibility for all economic regulations, including, among other matters, the issuance of certificates of public convenience and necessity to air carriers, the fixing of rates for the transportation of mail by air and the regulation of rates for the transportation of passengers and property by air, the supervision of interlocking relationships

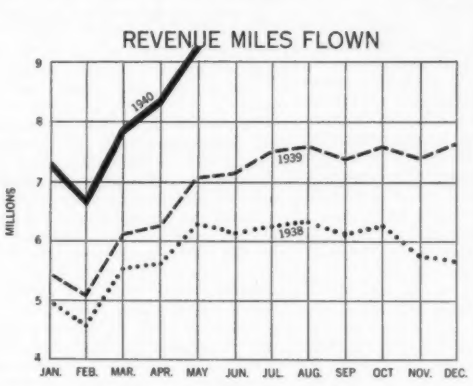
(See *REORGANIZATION, page 307*)

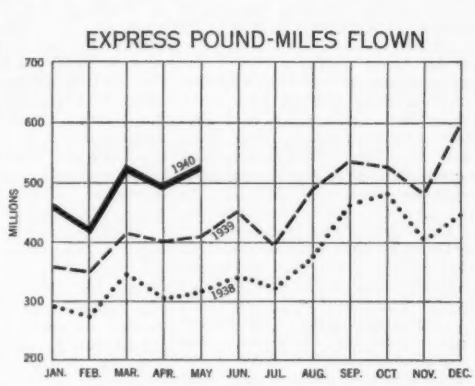
New Division of Safety Regulation Functions

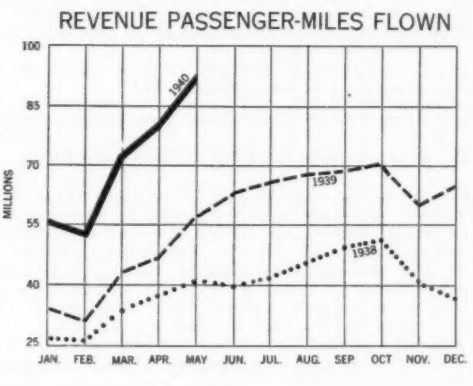
The Administrator is to exercise the functions of—	The Board is to exercise the functions of—
1. Recommending and supporting safety standards, rules, and regulations in all cases where, in the course of the administration and enforcement of such standards, rules, and regulations, it appears to the Administrator necessary or desirable that existing standards, rules, and regulations be amended or that new ones be adopted.	1. Preparing, analyzing, technically and legally, and prescribing safety standards, rules, and regulations in such detail as may seem proper to the Board, including those proposed by the Administrator as well as those proposed by the Board on its own initiative.
2. Interpreting safety standards, rules, regulations, and applicable statutes, in connection with the administration and enforcement of such standards, rules, regulations, and statutes.	2. Interpreting safety standards, rules, and regulations, and applicable statutes, in connection with suspension and revocation safety proceedings, and in connection with proceedings upon the denial of an application for the issuance or renewal of an airman certificate, and in connection with questions submitted to the Board either by the Administrator or by others requesting interpretations of such standards, rules, and regulations or applicable statutes.
3. Making the necessary inspections and flight tests, and conducting the necessary examinations preceding issuance in particular cases of various certificates referred to in title VI of the act, issuing such certificates and renewing, altering, amending, or modifying the same, subject, of course, to compliance with all applicable statutes and to the safety standards, rules, and regulations prescribed by the Board. This will also include, of course, the denial of applications for such certificates or renewal thereof and in the event that an airman (whose application for a certificate has been denied) petitions for reconsideration, the Administrator will present the case in support of the denial in any hearing.	3. Receiving of all petitions for reconsideration of a denial of an application for an airman certificate or renewal thereof under section 602 (b) of the act, setting such petitions down for hearing before an examiner of the Board, and making final disposition of such petitions.
4. Recommending to the Board punitive and corrective actions by the Board, where it has jurisdiction in connection with the enforcement of the safety provisions of the act and of safety standards, rules, and regulations. This will include recommendations for the issuance of orders directed to the holders of certificates requiring them to show cause why such certificate should not be suspended or revoked.	4. Issuance, upon the recommendation of the Administrator or upon the Board's own initiative, of orders to show cause directed to holders of safety certificates.
5. Effecting emergency suspension of certificates under section 609 of the act and presenting cases to the Board or its examiners (including cases where hearings have been waived) for the suspension and revocation of certificates issued under title VI of the act.	5. Hearing and deciding suspension and revocation cases arising under section 609 of the act, including cases instituted upon the initiative of the Board, and deciding all such cases even if a hearing has been waived. The Board will also handle appeals to the courts from suspension and revocation orders.
6. Requesting the Board for a formal investigation of safety matters which, in his opinion, require such investigation under title X of the act and presenting such relevant evidence as may be available to him to the Authority or one of its examiners.	6. Receiving and considering all formal complaints with respect to safety matters which are filed under section 1002 (a) of the act and instituting all investigations, holding all hearings, and entering all orders with respect to safety-regulation matters which may be called for under sections 1002 (b) and (c) of the act.
7. Acceptance of offers in compromise of civil penalties under section 901 of the act and transmission to the Attorney General of uncompromised civil penalty cases.	7. The Board, in cooperation with the Department of Justice, will handle all appeals to the courts from its orders relating to safety matters.

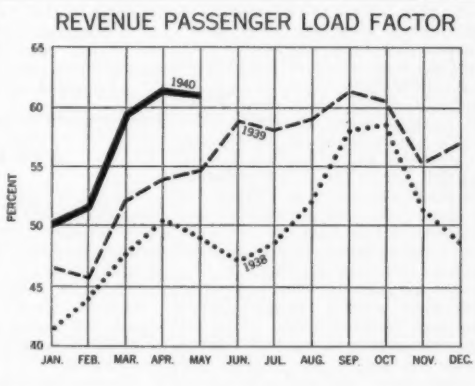
AIR TRANSPORTATION

Domestic Air Carrier Traffic Statistics for 1938, 1939, and the First 5 Months of 1940









Domestic Air Carrier Traffic Statistics for May 1940

Operator	Revenue miles flown		Revenue passengers carried		Revenue passenger-miles flown		Express pound-miles flown		Revenue passenger load factor (percent)	
	May 1940	Percent change over 1939	May 1940	Percent change over 1939	May 1940	Percent change over 1939	May 1940	Percent change over 1939	May 1940	May 1939
American Airlines, Inc.	2,202,855	35.74	74,403	55.91	27,107,469	51.44	126,865,559	21.72	70.68	66.42
Boston-Maine Airways, Inc.	69,640	13.12	1,915	25.66	282,495	21.32	418,328	29.10	40.57	37.82
Braniff Airways, Inc.	422,913	35.32	10,580	107.33	3,373,388	106.50	12,445,330	24.45	50.92	55.26
Chicago & Southern Airlines, Inc.	178,948	4.86	4,302	77.99	1,567,871	72.52	6,564,383	33.43	46.86	54.27
Continental Air Lines, Inc.	119,826	99.58	1,348	229.58	392,434	179.85	627,233	113.90	46.38	35.57
Delta Air Corporation	187,396	50.97	4,525	104.94	1,162,726	93.50	1,915,720	63.86	53.00	48.41
Eastern Air Lines, Inc.	1,274,131	40.06	29,813	42.63	12,286,567	57.23	64,082,416	32.45	54.66	48.86
Inland Air Lines, Inc.	102,932	13.41	1,133	61.63	297,550	68.41	356,017	−23.39	28.91	19.47
Marquette Air Lines, Inc.	17,787	−25.17	122	−56.89	29,782	−56.97	0	.....	27.91	36.39
Mid-Continent Airlines, Inc.	139,786	46.25	2,284	72.38	608,675	87.65	1,221,132	7.97	43.54	37.04
National Airlines, Inc.	86,727	44.51	1,574	111.56	378,534	134.28	622,031	32.51	43.65	28.06
Northwest Airlines, Inc.	497,805	11.56	11,600	53.42	4,459,484	52.02	21,175,423	13.47	43.95	49.81
Pennsylvania Central Airlines Corporation	355,960	14.91	18,477	68.97	3,357,356	73.40	10,606,534	17.42	61.69	62.51
Transcontinental & Western Air, Inc.	1,350,306	29.88	28,590	56.95	13,596,411	51.37	81,046,108	42.93	61.54	52.22
United Airlines Transport Corporation	2,053,125	29.76	41,032	68.38	20,796,794	64.28	179,472,552	26.71	61.99	53.46
Western Air Express Corporation	193,823	−3.58	4,110	61.43	1,384,008	50.11	14,933,879	22.66	55.08	37.75
Wilmington-Catalina Airlines, Ltd.	12,727	6.59	2,492	7.14	74,760	7.14	464,490	11.61	58.35	55.66
Total	9,266,687	30.11	238,300	59.62	91,186,304	58.63	522,817,135	27.54	60.04	54.83

United Air Lines-Western Air Express Merger Denied

Interchange of Sleeper Plane Equipment Approved

In two decisions, both relating to United Air Lines Transport Corporation and Western Air Express Corporation, the Civil Aeronautics Authority on June 19 approved the interchange of sleeper plane equipment between them on a leasing basis, but denied permission for United to acquire control of Western Air Express. Each decision represents a first instance of Authority action in its respective field.

United Air Lines operates one of the main transcontinental air line systems over a route proceeding from New York to Chicago, Salt Lake City and San Francisco. Other United Air Line routes run from San Diego and Los Angeles to Seattle and Vancouver, and from Salt Lake City northwestward to cities in Oregon and Washington. Western Air Express operates a service from San Diego to Los Angeles and Salt Lake City, with a northward extension through Butte and Helena to Great Falls, Mont. For many years these two air line companies have maintained connecting schedules between Los Angeles and points east of Salt Lake City on United's transcontinental route which involve a change of planes at Salt Lake City. Since the development of sleeper planes, however, such changing of planes has been found seriously to affect the convenience of the service to through passengers.

On April 21, 1939, United and Western filed an application requesting the Authority's approval of an agreement for the "interchange" of certain sleeper planes at Salt Lake City. For example, a sleeper plane belonging to United Air Lines, and carrying passengers from the east destined for Los Angeles, would be taken over by a Western Air Express crew at Salt Lake City and flown to Los Angeles as equipment leased by the latter air line, and a sleeper plane belonging to Western Air Express, carrying passengers in the opposite direction would be leased by United Air Lines at Salt Lake City and taken over by a United crew at that point. On July 7, 1939, United Air Lines filed an application with the Authority for approval of the acquisition of control by United of Western Air Express through the purchase of a majority of the latter company's outstanding stock, and the subsequent merger of the two companies or the purchase of Western's assets by United.

Transcontinental & Western A
as the operator of a transcontinental air line with western terminals at both Los Angeles and San Francisco intervened in both cases and opposed approval of the applications. A committee representing a group of minority stockholders of Western Air Express opposed the approval of the acquisition of control of Western Air Express by United Air Lines.

In the opinion accompanying its order on the interchange of equipment, the Authority found that such interchange of equipment "would improve the service offered to passengers flying to and from Los Angeles over the routes of Western and United. The coordination of transportation by air carriers is expressly mentioned in section 2 (b) of the Civil Aeronautics Act as one of the factors to be considered by the Authority as being in the public interest." The opinion presented findings in detail against contentions by Transcontinental & Western Air as intervener (1) that such an interchange agreement would result in the curtailment of sleeper service to other West Coast points on the United system; (2) that the agreement would result in the loss to Transcontinental & Western Air of a substantial amount of its transcontinental business and would therefore endanger its continued existence; (3) that the agreement would give United a virtual monopoly of all West coast business.

With respect to the proposed acquisition of control of Western Air Express by United Air Lines, however, the Authority found that a unification of the two companies would not be in the public interest. In arriving at its conclusion in this case, the Authority referred to the congressional intent to safeguard an industry of vital importance to the commerce and defense interests of the Nation against the evils of unrestrained competition on the one hand, and the consequences of monopolistic control on the other. It was pointed out that in attaining this objective the Civil Aeronautics Act seeks a state of competition among air carriers to the extent required by the sound development of the industry. "The maintenance of such a constructive competition," the Authority said, "will be best served at the present state of the industry's development by a reasonably balanced system of air transportation in every section of the country."

In the opinion accompanying the latter case, the Authority found, "(1) that the predominance which approval of the application in this case would give to United in the west coast region would result in a condition which would not be best suited to the encouragement and development in that region of a system of air transportation properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense, and (2) that the elimination of Western as the only independent north-south air carrier in the territory west of the Rocky Mountains would not be in accordance with the best interests of local business in that territory and would not serve to maintain and encourage competition to the extent necessary to assure the development of a properly balanced system of air transportation in that section of the country."

For full texts of these opinions, see pages 301 and 314.

Additional Services Approved for Three Air Lines

The Civil Aeronautics Authority on June 28 decided three cases in which air lines sought to extend their services through amendments to the certificates of public convenience and necessity under which they were operating.

Eastern Air Lines was granted permission to engage in air transportation of persons, property, and mail on two new routes. One route will lie between St. Louis, Mo., and Nashville, Tenn., via Evansville, Ind. The other new route added to the Eastern system will extend from the three cities of Alabama, Florence - Sheffield - Tuscumbia, commonly called the Tri-Cities in the Muscle Shoals area, to Nashville, Tenn. (For full text of opinion, see p. 360.)

United Air Lines was granted permission to include Red Bluff, Calif. as an intermediate stop on its Route No. 11, between San Diego, Calif., and Seattle, Wash. The Authority, however, denied United Air Lines' petition to establish the cities of Merced, Modesto, Stockton, Marysville, and Chico, Calif., as intermediate stops on the same route. (For full text of opinion, see p. 347.)

Pennsylvania-Central Airlines was granted permission to include Erie, Pa., as an intermediate point on its services between Pittsburgh, Pa., and Buffalo, N. Y. In addition, it was awarded the privilege of transporting air mail over this route which it had previously operated as a service for passengers and express only. The Authority, however, denied Pennsylvania-Central's application also to include Youngstown, Ohio, as an intermediate point on this route on the ground that the flow of traffic through Youngstown would indicate that that city could better be served by being made an intermediate stop on some other existing air route. (For full text of opinion, see p. 378.)

Authority Decides Important United Mail-Rate Case

The Civil Aeronautics Authority on June 22 announced its decision fixing new rates of compensation for the carriage of air mail on the various air mail routes operated by the United Airlines Transport Corporation. Because United operates one of the most extensive systems in the country and because air-line traffic of all sorts is currently increasing very rapidly, the Authority's decision is necessarily one of the most complex yet promulgated in any air line rate case.

United Airlines Transport Corporation operates four air mail routes designated by the Post Office Department as domestic routes No. 1, 11, 12, and 17. Route No. 1 is a transcontinental route between Newark-New York and San Francisco via Chicago and Salt Lake City. Route No. 11 parallels the Pacific coast from Seattle to San Diego. Route No. 12 extends northwestward from Salt Lake City to cities in Oregon

(See UNITED MAIL RATES, page 311)

CIVIL AERONAUTICS AUTHORITY

OFFICIAL ACTIONS

OPINIONS, ORDERS AND REGULATIONS

FOR THE PERIOD JUNE 16–30, 1940

C. A. A. OPINIONS

C A. A. Opinions—Vol. I Temporary Page No. CCXV

DOCKET NO. 215

UNITED AIR LINES TRANSPORT CORPORATION AND WESTERN AIR EXPRESS CORPORATION.—INTERCHANGE OF EQUIPMENT

In the matter of the application of United Air Lines Transport Corporation and Western Air Express Corporation under section 408 (b) and/or section 412 (b) for approval of an agreement, C. A. A. No. 102, relating to the interchange of sleeper airplanes at Salt Lake City, Utah.

Decided June 19, 1940

Applicants found entitled to approval of the interchange agreement of March 17, 1939, under section 408 (b) of the Civil Aeronautics Act upon condition that a provision be inserted in said agreement relating to a depreciation charge on planes leased under the agreement.

Applicants found entitled to approval of the interchange agreement under section 412 (b) of the Civil Aeronautics Act.

APPEARANCES:

Paul M. Godehn and *Frank E. Quindry*, for United Air Lines Transport Corporation.

Hugh W. Darling, for Western Air Express Corporation.

Gerald B. Brophy and *John T. Lorch*, for Transcontinental & Western Air, Inc., Intervener.

George C. Neal and *Benedict P. Cottone*, for the Civil Aeronautics Authority.

OPINION

BY THE AUTHORITY:

On March 20, 1939, United Air Lines Transport Corporation, hereinafter called "United," and Western Air Express Corporation, hereinafter called "Western," filed with the Authority, pursuant to section

NOTICE

As of July 1, when the Civil Aeronautics Board assumed the functions of the former five-member Authority, a new method of publication of opinions became effective. As in the past, however, the JOURNAL will carry an abstract of all rules, regulations, and orders and a syllabus of all opinions issued by the Board during the half-month period ending 2 weeks prior to the date of publication.

In the future, all opinions in economic proceedings will be printed individually. Arrangements will be made to supply to subscribers of the JOURNAL copies of all such opinions up to the date of expiration of current subscriptions. Opinions in cases of suspension, revocation, or denial of airman certificates will be made available in mimeograph form only.

Verbatim copies of all actions, with the exception of opinions in economic proceedings, may be obtained from the Publications and Statistics Division, Civil Aeronautics Authority, Washington, D. C.

Persons other than current subscribers will obtain economic opinions by ordering copies directly from the Superintendent of Documents, Washington, D. C. Arrangements will be made with the Superintendent of Documents to provide for the separate subscription, at a flat fee, for each series which will complete a bound volume. Details will be announced when arrangements are completed.

ABSTRACTS

Order No. 557: UAL and Western Air agreement approved for interchange of sleeper planes at Salt Lake City.

The Authority on June 19 approved an agreement (C. A. A. No. 102) filed by United Air Lines Transport Corporation and Western Air Express Corporation relating to the interchange of sleeper airplanes at Salt Lake City, Utah. (For full text of opinion and order see docket No. 215, p. 301.)

Order No. 558: UAL denied application for approval of proposed acquisition of assets of Western Air.

The Authority on June 19 denied application of United Air Lines Transport Corporation for approval of a proposed acquisition of control of, and of merger with or purchase of all the assets of, Western Air Express Corporation. (For full text of opinion and order see docket No. 270, p. 314.)

Order No. 559: Northwest Airlines granted permission to intervene in application of American Airlines.

The Authority on June 20 granted Northwest Airlines, Inc., permission to intervene in the application of American Airlines, Inc., for an amendment to its certificate of public convenience and necessity for route No. 7.

Order No. 560: Private pilot certificate of Harry W. Reed revoked.

The Authority on June 21 revoked private pilot certificate No. 60563, held by Harry W. Reed, DeKalb, Ill., for piloting an aircraft acrobatically without being equipped with a parachute and other violations of the Civil Air Regulations.

Order No. 561: Student pilot certificate of John B. Stirling suspended for 30 days.

The Authority on June 21 suspended for a period of 30 days student pilot certificate No. S–116398, held by John B. Stirling, Annapolis, Md., for piloting an aircraft at an altitude of less than 500 feet over open country and other violations of the Civil Air Regulations.

Order No. 562: Violations referred to the Attorney General for judicial action.

The Authority on June 21 referred to the Attorney General for judicial action the following case involving violations of the Civil Air Regulations:

Elmo Edward Sanders, Hollywood, Calif.—For piloting an aircraft on a civil airway carrying persons not possessed of any grade of pilot certificates, one of whom occupied a control seat in said aircraft without the dual controls having been made inoperative.

412 of the Civil Aeronautics Act of 1938, hereinafter referred to as the "act," a copy of an agreement executed on March 17, 1939, hereinafter called the "agreement," for the interchange of certain planes at Salt Lake City, Utah. In order to obtain additional facts to enable the Authority to determine whether or not the agreement is subject to the provisions of the act, and whether or not it is adverse to the public interest or in violation of the act, the matters involved were assigned for public hearing. Notice thereof was given to all interested parties.

On April 21, 1939, United and Western filed an application requesting the Authority's approval of the agreement under section 408 (b) and/or section 412 (b) of the act. As a result thereof, under date of April 24, 1939, the Authority ordered that the hearing upon the agreement should include consideration of any and all pertinent matters relating to such application.

Transcontinental & Western Air, Inc., hereinafter called the "intervener," filed a petition for leave to intervene, which was granted. A hearing was held before Examiner Francis W. Brown on the dates of May 8 to May 11, inclusive. The examiner's report recommended approval of the agreement under section 412 (b) of the act, and was duly served upon all of the parties. Exceptions thereto were filed by the intervener, and oral argument was held before the Authority on November 27, 1939.

United operates route No. 1 from New York, N. Y., and Newark, N. J., to San Francisco and Oakland, Calif. At Salt Lake City it connects with Western's route No. 13, which extends from that point to Los Angeles and San Diego, Calif. For many years the applicants and their predecessors have maintained connecting schedules between Los Angeles and points east of Salt Lake City on United's route No. 1, which involve a change of planes at Salt Lake City. The agreement here under consideration provides for the successive leasing by the parties to each other from time to time at Salt Lake City, of certain of the sleeper airplanes owned by them, respectively. This arrangement is designed to provide a through service over the routes referred to above and will avoid the necessity of sleeper passengers on certain trips changing planes at Salt Lake City at inconvenient hours during the night.

The agreement provides for the establishment of such sleeper schedules "as shall be mutually agreed upon." The rental to be paid by each party to the other includes fixed charges per hour of operation for engines and propellers to cover depreciation. There is no depreciation charge on the planes, but overhaul charges on both planes and engines are included in the rental fixed by the agreement. Replacements of major parts are to be made by the owner of the plane.

Except for this exchange of equipment, the operations of the parties are to remain unchanged, and it is expressly provided that the crews of the planes involved shall serve only on the routes of their respective employers, subject to their direction and control. No change is to be made in the cabin arrangement of the planes subject to the agreement unless mutually agreed upon, and the parties must display a sign in each plane leased under the agreement stating by which company it is being operated. The agreement also provides that nothing

therein shall be construed to grant either party any right whatever (*a*) to determine whether any trip of the other party shall be operated

or canceled either in whole or in part, or (*b*) to exercise any control over any operation or business or affairs of or interest in the other party.

The leasing of planes under the agreement is to commence at such time as is mutually agreed upon by the parties after approval by the Authority, and may be terminated by either party upon 30 days' notice.

There is no dispute concerning the application of section 412 of the act. The agreement provides for a cooperative working arrangement between United and Western, and has been characterized by the parties as one for the pooling of equipment. With respect to agreements of this nature, section 412 (a) provides as follows:

> Every air carrier shall file with the Authority a true copy * * * of every contract or agreement (whether enforceable by provisions for liquidated damages, penalties, bonds, or otherwise) affecting air transportation and in force on the effective date of this section or hereafter entered into, or any modification or cancelation thereof, between such air carrier and any other air carrier, foreign air carrier, or other carrier for pooling * * * equipment * * * or for other cooperative working arrangements.

Section 412 (b) provides as follows

> The Authority shall by order disapprove any such contract or agreement, whether or not previously approved by it, that it finds to be adverse to the public interest, or in violation of this act, and shall by order approve any such contract or agreement, or any modification or cancelation thereof, that it does not find to be adverse to the public interest, or in violation of this act.

The intervener takes the position that sections 408 (a) (1), 408 (a) (2) and 411 of the act also govern this proceeding. The applicants contend that none of these sections have any application.

No complaint has been filed under section 411, which provides for the issuance by the Authority of orders to cease and desist from practices or methods of competition which it finds, after notice and hearing, to be unfair or deceptive, and an investigation thereunder has not been instituted by the Authority in this case. The Authority's order of April 24, 1939, included within the scope of the hearing consideration of any and all pertinent matters relating to the application for approval of the agreement, but this language does not contemplate a formal investigation and determination under section 411 since that section is not a matter relating to the application. The agreement is not yet in effect, and section 411 applies only to past or existing practices or methods of competition. Insofar as unfair or destructive competitive practices generally are concerned, the extent to which they may be embodied in the terms of the agreement is a matter to be considered in this proceeding in connection with the public interest.

Section 408 (a) (2) provides that it shall be unlawful, unless approved by order of the Authority, "for any air carrier * * * to purchase, lease, or contract to operate the properties, or any substantial part thereof, of any air carrier." The application of this provision to the

agreement in this case depends upon, (1) whether or not the agreement constitutes a lease within the meaning of this section, and (2)

ABSTRACTS
(*Continued*)

Order No. 563: Adopted order determining rates of compensation to United Air Lines for transportation of mail over various routes.

The Authority on June 22 adopted an order fixing and determining the fair and reasonable rates of compensation to be paid United Air Lines Transport Corporation for the transportation of mail over routes Nos. 1, 11, 12, and 17. (For full text of opinion and order see docket No. 16–406 (A)–1, p. 325.)

Order No. 564: Special notice ordered to be published in Weekly Notices to Airmen on flight of United States aircraft in Canada.

The Authority on June 18 ordered that a "Special notice" announcing the removal of certain restrictions on the flight of United States registered aircraft in Canada and a change in procedure for flight in Canada be published in the Weekly Notice to Airmen.

Order No. 565: Edward C. Watson, Jr. ordered to show cause.

The Authority on June 28 directed Edward C. Watson, Jr., San Carlos, Calif., to appear before an examiner of the Authority and show cause why his aircraft and engine mechanic certificate No. 11179 should not be suspended or revoked.

Order No. 566: Commercial pilot certificate of Louis S. Hatzfeld revoked.

The Authority on June 28 revoked commercial pilot certificate No. 34149, held by Louis S. Hatzfeld, Rye, N. Y., for piloting an aircraft at an altitude less than 500 feet above open water in violation of the Civil Air Regulations.

Order No. 567: Violation referred to the Attorney General for judicial action.

The Authority on June 28 referred to the Attorney General for judicial action the following case involving violations of the Civil Air Regulations:

Alfred W. Dunagan, Blythe, Calif.—For piloting an aircraft on a civil airway without being possessed of a valid pilot certificate and other violations.

Order No. 568: Violation referred to the Attorney General for judicial action.

The Authority on June 28 referred to the Attorney General for judicial action the following case involving violations of the Civil Air Regulations:

Herbert Rayner, Jr., Louisville, Ky.—For piloting an aircraft on a civil airway without being possessed of a valid pilot certificate and other violations.

ABSTRACTS

(Continued)

Order No. 569: Offers accepted in compromise of civil penalties for violations.

The Authority on June 28 accepted the following offers in compromise of civil penalties incurred for violations of the Civil Air Regulations:

Franklin Hurst, Somerset, Pa.—For piloting an aircraft on a civil airway without being possessed of a valid pilot certificate and other violations—$50; and

Edward F. Knight, Toledo, Ohio.—For piloting an aircraft on a civil airway after the airworthiness certificate of said aircraft had expired—$50.

Order No. 570: Offers accepted in compromise of civil penalties for violations.

The Authority on June 28 accepted the following offers in compromise of civil penalties incurred for violations of the Civil Air Regulations:

Gordon J. Alves, South Euclid, Ohio.—For piloting an aircraft on a civil airway at an altitude less than 1,000 feet over a congested area—$50;

S. D. Mendenhall, Edwardsville, Ill.—For piloting an aircraft on and across various civil airways without being possessed of a valid pilot certificate—$50; and

Lewis E. Schofield, Norfolk, Va.—For piloting an aircraft on and across various civil airways when said aircraft was not possessed of a valid airworthiness certificate and when he was not possessed of a valid pilot certificate—$100.

Order No. 571: Transcript of record in National and Eastern certificate applications filed in United States Court of Appeals for District of Columbia.

The Authority on June 28 directed the certification and filing in the United States Court of Appeals for the District of Columbia of the transcript of the record in the matter of the applications of National Airlines, Inc., and Eastern Air Lines, Inc., for certificates of public convenience and necessity.

Order No. 572: Air Line Pilots Association granted permission to withdraw intervention in TWA case.

The Authority on June 28 granted Air Line Pilots Association, International, permission to withdraw its intervention in the application of Transcontinental & Western Air, Inc., for approval of a contract between Marquette Airlines, Inc., John E. McKelvy, and Transcontinental & Western Air, Inc., and of the acquisition by Transcontinental & Western Air, Inc., of all the issued and outstanding stock of Marquette Airlines, Inc., and of the assets and business of Marquette Airlines, Inc.

whether or not a substantial part of the properties of any air carrier is subject thereto.

Since the agreement, by its express terms, provides for the leasing of aircraft, it would appear that it does in fact constitute a "lease" as that term is used in section 408 (a) (2). The nature of the agreement as a lease is not disputed, and the circumstance that it provides for the leasing of aircraft by each of the parties from the other, even though an even exchange is contemplated, does not remove it from the terms of that section.

It is an established principle of statutory construction that it is not permissible to interpret the clear and unambiguous language of a statute.[1] Although the title of section 408 does not refer specifically to leases, that fact cannot be relied upon to create an ambiguity or to modify the meaning of the unambiguous language in subparagraph (1) (2) thereof. With specific reference to the titles of statutes or headings contained therein, it has been held that the name given to a statute, or the designation given to its subdivisions, can be resorted to only where there is an ambiguity in its text.[2] The Supreme Court of the United States has explained that while the title is a part of the act, it is only a formal part and cannot be used to extend or restrain any positive provision contained in the body of the act.[3]

With respect to the second question, it appears that a substantial part of the properties of at least one of the applicants necessarily will be subject to the successive leases provided for in the agreement. According to testimony at the hearing, the book value of Western's two sleeper planes with engines on March 31, 1939, was $154,206.14, or 19 percent of the value of the corporation's total assets.[4] It appears from the record that both of Western's sleeper planes will be in United's possession simultaneously on some occasions, pursuant to the operations under the agreement.

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[1] *United States* v. *Hartwell*, 6 Wall. 385, 395; *Schooner Paulina's Cargo* v. *United States*, 7 Cranch. 52; *McCluskey* v. *Cromwell*, 11 N. Y. 593, 601; Lewis' Sutherland Statutory Construction (2d Ed.), vol. 2, sec. 366, pp. 698, 699; Black Interpretation of Laws, ch. III, sec. 26, p. 36.

[2] *Bengzon* v. *Secretary of Justice of Philippine Islands*, 299 U. S. 410; *State* v. *Mele*, 125 Conn. 210, 4 Atl. (2d) 336. See also *City of Spokane* v. *State*, 89 Pac. (2d) 826; *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 327.

[3] *Hadden* v. *The Collector*, 5 Wall. 107. See also the Delaware Superior Court's opinion in *Trader* v. *Jester*, 1 Atl. (2d) 609, in which it was held that where the language of a statute is clear and unambiguous, reort may not be had to the headnote of a section to create an ambiguity and thereby furnish a reason for supplying an alleged omission.

[4] On March 31, 1939, the book value of the total assets of Western was $831,504.28. The book value of the total assets of Western was $1,169,841.29 on April 30, 1940, and the value of its two sleeper planes was $103,060 on the same date. Assuming that Western has maintained its engine value since March 31, 1939, the planes with engines would be valued at approximately $125,000 as of April 30, 1940, or more than 10 percent of the value of the total assets on that date. (April 30, 1940, figures obtained from the carrier's monthly financial report, Form 2780.)

The word "substantial" is a relative term, the meaning of which is to be gaged by all of the circumstances surrounding the transaction in reference to which the expression is used.[5] It is defined as meaning something worth while as distinguished from something without value or merely nominal, and it has been held that proportions as low as 20, 7, and even 2 percent are substantial.[6]

Considering all of the circumstances of this case, we find that a substantial part of the properties of Western will be leased from time to time under the agreement, and since it is enough that a substantial part of the properties of any air carrier is subject to the lease, it is our conclusion that section 408 (a) (2) does have application to the present proceeding.

There is no fundamental difficulty in the fact that under this interpretation sections 408 and 412 will apply to the same agreement in some instances. If there is a contract or lease involving something less than a substantial part of the properties of any carrier, it is enough if it meets the public interest test prescribed in section 412 (b), but if a substantial part of the properties of any air carrier is subject to such contract or lease, a hearing must he held and the additional test of the first proviso in section 408 (b) must be met. In the latter case, of course, the possibility of control is greater, which demonstrates the need for a hearing and the additional safeguard embodied in the proviso.

Since subparagraph (2) of section 408 (a) applies, and it will thus be necessary to consider the provisions of section 408 (b) in any event, it is unnecessary to discuss the intervener's contention that subparagraph (1) also is applicable.

Section 408 (b), insofar as pertinent to this opinion, provides as follows:

"* * * Unless, after such hearing, the Authority finds that the * * * lease * * * will not be consistent with the public interest or that the conditions of this section will not be fulfilled, it shall by order, approve such * * * lease * * * upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe: *Provided*, That the Authority shall not approve any * * * lease * * * which would result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party to the * * * lease * * *."

Under the terms of section 408 (b) and 412 (b) of the act, two distinct issues are presented for decision: (1) Whether or not the agreement is adverse to or inconsistent with the public interest, or will violate the act or any of the conditions of section 408; and (2) whether or not the agreement will result in creating a monopoly and thereby restrain competition or jeopardize another air carrier.

Insofar as the "public interest" is concerned, the expressions "adverse to" and "not consistent with" have essentially the same

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[1] *Fuhrman* v. *American National Building & Loan Association*, 126 Cal. App. 202, 14 Pac. (2d) 601, 604.

[2] *In re Krause's Estate*, 173 Wash. 1, 21 Pac. (2d) 268; *Yeary* v. *Hollbrook* (Va.), 198 S. E. 441, 450. A bequest to a charitable institution which divided its total expenditures equally among the 48 States, has been held exempt from taxation under a State statute allowing exemption where the expenditures within that State constitute a "substantial part of its activities." *Tax Comm. of Ohio* v. *American Humane Education Society*, 42 Ohio App. 4, 181 N. E. 557. A corporation which in 3 tax years had gross incomes of $74,813, $59,548, and $60,864, and which in such years received as income from investments in stocks and bonds $8,649, $6,203 and $4,127, respectively, was held to have received "substantial and material income from capital invested," within the Revenue Acts of 1918 and 1921, section 200, defining Personal Service Corporations, and section 321, exempting them from taxation. *Conklin-Zonne Loomis Company* v. *Commissioner of Internal Revenue*, 29 Fed. (2d) 698, 700; petition for certiorari denied, 279 U. S. 871. A finding that a bankrupt's sale of merchandise worth $4,000, out of a total stock of goods valued at from $20,000 to $25,000, involved a "substantial part of the stock in trade," within the Bulk Sales Law, has been held to be warranted. *Schainman* v. *Dean*, 24 Fed. (2d) 475, 476; petition for certiorari denied, 278 U. S. 598.

ABSTRACTS

(*Continued*)

Order No. 573: Approved application to amend convenience and necessity certificate of United for route 11, but denied other applications.

The Authority on June 28 approved application of United Air Lines Transport Corporation to amend its certificate of public convenience and necessity for route No. 11 to include Red Bluff, Calif., as an intermediate point but denied applications to include Stockton, Marysville, Chico, Modesto, and Merced, Calif., as intermediate points. (For full text of opinion and order see docket Nos. 261, 268, 275, 276, 280, and 281, p. 347.)

Order No. 574: Amendment to route 40 and new certificate of convenience and necessity issued to Eastern Air Lines.

The authority on June 28 authorized the issuance of a new certificate of public convenience and necessity to Eastern Air Lines, Inc., authorizing the transportation of persons, property, and mail between St. Louis, Mo., and Nashville, Tenn., via Evansville, Ind., and amended the certificate of Eastern Air Lines, Inc., for route No. 40. (For full text of opinion and order see docket Nos. 9–401 (B)–5 and 230, p. 360).

Order No. 575: Convenience and necessity certificate of PCA amended for Pittsburgh-Buffalo route.

The Authority on June 28 approved application of Pennsylvania-Central Airlines Corporation to amend its certificate of public convenience and necessity for its Pittsburgh-Buffalo route to include Erie, Pa., as an intermediate point, but denied its application to include Youngstown, Ohio, as an intermediate point. (For full text of opinion and order see docket Nos. 247 and 296, p. 378.)

REGULATIONS

Regulation No. 88: Adopted amendment No. 1 to Regulations, serial No. 16.

(*This regulation was not released in time for inclusion in the last issue of the JOURNAL.*)

The Authority on June 15 adopted amendment No. 1 to Regulations, serial No. 16, requiring compliance with operation specifications by air carriers engaged in air transportation between the United States and Alaska and the United States and New Zealand in addition to those engaged in trans-Atlantic service.

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ABSTRACTS

(Continued)

Regulation No. 89: Authorized free transportation for certain persons as observers on flight from Seattle to Juneau.

The Authority on June 18 authorized Pacific-Alaska Airways, Inc., to issue free transportation for certain persons as observers on a flight from Seattle, Wash., to Juneau, Alaska, and return.

Regulation No. 90: Authorized free transportation for 16 representatives of press on flight from Seattle to Juneau.

The Authority on June 21 authorized Pacific-Alaska Airways, Inc., to issue free transportation for 16 representatives of the press on a flight from Seattle, Wash., to Juneau, Alaska, and return.

Regulation No. 91: Adopted amendment No. 59 of the Civil Air Regulations.

The Authority on June 18 adopted amendment No. 59 of the Civil Air Regulations requiring authorization for oreign and overseas flights.

Regulation No. 92: Adopted amendment No. 60 of the Civil Air Regulations.

The Authority on June 28 adopted amendment No. 60 of the Civil Air Regulations designating Clover Field, Santa Monica, Calif., as a control airport.

meaning, and the same considerations, therefore, will govern the Authority's decision with respect to the "public interest" under both sections.

The chief justification for the agreement advanced by the applicants is that it will avoid an inconvenient change of planes at Salt Lake City by sleeper passengers traveling between Los Angeles and points east of Salt Lake City on at least two flights, one west-bound, which requires a change at about 5:30 a. m., and the other east-bound requiring a change at about 4 a. m.; and will increase the comfort and convenience to passengers on a third flight east-bound, which requires a change at about 11:30 p. m. The existing schedules, of course, are subject to change, but, according to the record, the necessity of maintaining overnight service to meet the demands of business men assures the maintenance of comparable times of arrival and departure at Salt Lake City. We find that the elimination of changes at these hours will improve the service offered to passengers flying to and from Los Angeles over the routes of Western and United. The coordination of transportation by air carriers is expressly mentioned in section 2 (b) of the act as one of the factors to be considered by the Authority as being in the public interest.

The intervener advances three major contentions in support of its position that the agreement is adverse to the public interest. First, it is argued that the agreement will result in the curtailment of sleeper service to other west coast points on United's system. Second, it is maintained that the agreement will result in the loss to the intervener of a substantial amount of its transcontinental business and will endanger its continued existence as a transcontinental operator. Third, it is alleged that the agreement will give United a virtual monopoly of all west coast business.

The evidence in the record indicates that the proposed schedules agreed upon by Western and United will not render the sleeper service to San Francisco and to the Northwest, i. e., Portland and Seattle,

materially less convenient. At the time of the hearing San Francisco was served by one through sleeper plane each way, and by another operating to and from Salt Lake City. Under the proposed schedules, San Francisco will be served by one through sleeper plane each way, by a west-bound sleeper plane terminating at Salt Lake City, and by an east-bound sleeper plane starting at Denver. Portland and Seattle at the time of the hearing were served by two through sleeper planes west-bound, and one through sleeper plane east-bound. Under the proposed schedules, these two cities will be served by one through sleeper plane west-bound (except on Monday and Tuesday) and another arriving at Salt Lake City from the east at about 11 a. m., in addition to a through sleeper plane east-bound (except on Monday and Tuesday). In other words, the sleeper service to and from San Francisco, Portland, and Seattle will be essentially the same, the fact that a day plane instead of a sleeper plane is to be used on a flight to Portland and Seattle leaving Salt Lake City at about 11 o'clock in the morning not being considered injurious to the service. The fact that the through sleeper plane to and from the Northwest will not operate on Monday and Tuesday results from the lack of business from this section during the early part of the week, according to the testimony,

and cannot reasonably be attributed to the agreement since sleeper planes are available for service on these days in the event that traffic warrants.

The connecting schedules of Western and United do not provide passengers between Los Angeles and points east of Salt Lake City with any through sleeper trips. Under the proposed schedules, Los Angeles will be served by two through sleeper planes west-bound and one through sleeper plane east-bound. In addition, there will be sleeper service from Los Angeles to Denver on a second east-bound trip, and from Denver east on a third.

Los Angeles will receive better sleeper service than either San Francisco or the Northwest under the proposed schedules, but this is due in part at least to the two sleeper planes made available by Western for through sleeper service under the agreement. There is no evidence in the record to show that United could or would give better sleeper service to San Francisco and the Northwest with its present equipment if the agreement did not become effective.

The intervener urges that United may be expected to change the proposed schedules at an early date and withdraw sleeper planes from the service to San Francisco or the Northwest in order to run additional trips to and from Los Angeles. Although this may be possible under the agreement, there is nothing in the record to suggest that any such action is contemplated. If the sleeper service to the other West coast cities is curtailed in favor of Los Angeles, it would seem that such action would work to the advantage of the intervener, who

has a route to San Francisco, and Northwest Airlines, Inc., which competes for Portland and Seattle traffic, since United's service to these points would be less attractive and more passengers might be persuaded to use the competitors' routes. Furthermore, it is to be noted that the Authority has power under the act to enforce adequate service to the points mentioned if the need for such action should ever arise.

A witness for the intervener stated that 11 sleeper planes, the combined number owned by Western and United, would not, in his opinion, be sufficient to operate the proposed schedules since this allows for only two reserve planes. Witnesses for the applicants were of the opinion that the available sleeper planes would be adequate to operate the proposed schedules.

With reference to the intervener's suggestion that intermediate points are not benefited, it is obviously impossible to maintain the most convenient hours of arrival and departure at all intermediate points on transcontinental trips, and the changes in the proposed schedule affecting Denver and Omaha, as well as other intermediate points, cannot be relied upon to demonstrate either a more or less convenient coast-to-coast service.

We find that the evidence in the record fails to establish that United's sleeper service to San Francisco and the Northwest will be materially curtailed under the proposed schedules adopted by the applicant's pursuant to the agreement, and that there is nothing inherent in the agreement which will adversely affect the present service rendered by United.

LEDERER

(Continued from page 298)

Following a visit to Europe on an engineering mission, Lederer took up work as an aeronautical engineer for the United States Air Mail Service, where he was in charge among other things of investigating accidents and making changes in designs of air mail planes designed to improve their safety. After several years of this work Lederer served as consulting engineer to various airplane manufacturers and to the Aviation Insurance Underwriters, where he again came in contact with studies of flying accidents and hazards to safety. Since 1929 he has served as chief engineer of Aero Insurance Underwriters, in which capacity he was responsible for safety activities of an extremely varied nature affecting air line, charter, and private flying. He was also required to make estimates of risks connected with all types of flying operations. During 1939 the organization which he supervised consisted of 170 specially trained employees scattered over the United States and Canada who during the year carried out some 3,000 inspections of airplanes, hangars, and airports insured by their company. Since 1939 Lederer has prepared and been responsible for the distribution throughout the aeronautical industry of a news letter safety bulletin which is acknowledged to have contributed substantially to the improvement of aviation safety in this country.

At present Mr. Lederer is working with Tom Hardin, Chairman of the Air Safety Board, in readjusting the organization of the Safety Bureau. While Mr. Hardin has announced his intention of leaving Government service he has, at the Authority's invitation, agreed to remain at his post as long as he can be of assistance in launching the new organization.

REORGANIZATION

(Continued from page 298)

between air carriers and others in the aeronautical industry, and passing upon contracts between air carriers affecting air transportation in certain ways.

It was also responsible for all safety regulation, which included the issuance of all types of safety certificates (pilot, mechanic, air carrier operating, type, production, airworthiness, etc.), promulgation of safety standards, rules, and regulations, and the enforcement of such rules and regulations by available means including the suspension and revocation of safety certificates and the initiation of proceedings to impose civil penalties.

In addition, the Authority provided for the recordation of title to, and the registration of, aircraft. Furthermore, the Authority had the responsibility for the administration of the Civilian Pilot Training Act of 1939.

The Administrator was responsible for the establishment, maintenance, and operation of the civil airways and all of the air navigation facilities located upon

them. This included the supervision of all traffic control centers. In addition, he had the duty of promoting civil aeronautics and of carrying out certain developmental work with, hnd service testing of, aeronautical equipment.

The Air Safety Board had the responsibility of investigating accidents involving aircraft, reporting to the Authority the causes of such accidents, and recommending the adoption of any measures designed to prevent recurrence of similar accidents in the future.

The Two Plans

Reorganization Plan No. III transferred from the Authority to the Administrator of Civil Aeronautics (the new name given to the Administrator by this plan) the functions vested in the Authority by the Civilian Pilot Training Act of 1939; the functions of aircraft registration and of safety regulation described in titles V and VI of the Civil Aeronautics Act of 1938, except the functions of prescribing safety standards, rules and regulations, and of suspending and revoking certificates after hearing; the functions provided for by section 1101 of the Civil Aeronautics Act of 1938 relating to notices concerning hazards to air commerce; and the function of appointing such officers and employees and of authorizing such expenditures and travel as may be necessary for the performance of all functions vested in the Administrator.

Reorganization Plan No. IV transferred the functions of the office of Administrator of Civil Aeronautics to the Department of Commerce and these functions are now exercised by the Administrator under the direction and supervision of the Secretary of Commerce. The plan also abolished the offices of the Members of the Air Safety Board and consolidated the functions of the Air Safety Board with the functions of the Civil Aeronautics Authority (now the Civil Aeronautics Board). The Civil Aeronautics Board and its functions were placed within the framework of the Department of Commerce; but all of its functions are to be exercised with complete independence of the Secretary of Commerce.

Functions Exercised by the Board

The Board will retain the functions of economic regulation which are described above and the functions of prescribing safety standards, rules, and regulations and of suspending and revoking safety certificates after hearing (including the disposition of any petition for reconsideration of a denial by the Administrator of an application for the issuance or renewal of an airman certificate). The accident investigation and related functions which were exercised by the Air Safety Board are to be exercised by the Civil Aeronautics Board and the Board will have a staff both in Washington and in the field to assist it in this work.

In support of the claim that the intervener will be vitally affected by the operation of the agreement, the officers of the intervener testified that its business, in particular the transcontinental portion thereof, has suffered a steady decline, since 1936. The company's profits in 1935 and 1936 were attributed to the superiority of its flying equipment. The subsequent decline was said to be the result of the acquisition of similar equipment by competing lines. The disadvantages of the intervener's route, it appears, became evident for the first time after the competing lines obtained Douglas equipment. The importance to the intervener of its transcontinental business was stressed and it was stated that the establishment of a third through transcontinental service to Los Angeles would divert a substantial amount of the intervener's transcontinental traffic because of United's strong position on the West coast. These facts are introduced to support the conclusion of the witnesses that approval of the agreement will further weaken the intervener's position.

The fact that the inauguration of improved service will have incidental effects which will adversely affect competing air carriers

is not in itself sufficient to render the improvement inconsistent with, or adverse to, the public interest. Western and United already are jointly competing with the intervener for Los Angeles traffic, and they should be permitted to attempt to increase their transcontinental traffic by improving their service, at least in the absence of more important factors weighing against the public interest.

Section 2 (d) of the act lists as one of the factors to be considered as being in the public interest, the following:

> Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense.

If, in the ordinary case, competitors are to be prevented from inaugurating improvements in service solely as a protection to a particular air carrier, the development of an adequate air transportation system in this country will be retarded rather than assured. The improvement of a connecting service afforded by two air carriers would appear to be just as desirable as improvements in service which can be made by the carriers individually, and under the express terms of section 2 (b) of the act, the coordination of air transportation is to be encouraged.

There is no evidence in the record to show that American Airlines, Inc., and the intervener have been rendering inadequate through transcontinental service to and from Los Angeles, but this fact does not necessarily operate to prevent two connecting air carriers from attempting to improve their joint service to the same point. In this respect, the present case is essentially different from the case relating to the proposed acquisition of control of Western by United, which involves the elimination of one of the connecting air carriers as such rather than a mere improvement in the joint service rendered by the two independent connecting air carriers The controlling considerations in that case are not present here.

We find that the facts appearing in the record fail to establish that the agreement for which approval is sought will endanger the inter-

vener's continued existence as a transcontinental operator, or that unsound economic conditions in air transportation will result from the operation thereof; and whatever loss of business the intervener will suffer will be offset by the advantages of the interchange to the public.

The intervener also urges that the agreement is designed to create an illusion of a through transcontinental operation by a single line. With respect to this point, it still will be incumbent upon Western and United to indicate in the usual manner on maps and schedules that the service between Salt Lake City and Los Angeles is via Western. The terms of the agreement respecting the interior fittings of the planes subject thereto and Western's use of the term "Main-

liner," are merely descriptive of practices already in effect. Were there any reason to believe that the conduct of Western and United under the agreement was unethical, formal complaint could be filed under section 411, which offers a remedy. The agreement itself, and not the promotional practices of United, is here in issue. We find that the terms of the agreement are not inherently objectionable in this respect.

On the basis of the foregoing findings of fact, and the facts appearing in the record, we find that the proposed agreement for the interchange of equipment will not be adverse to, or inconsistent with, the public interest.

Whether or not the applicants are entitled to approval of the agreement under the terms of section 408 (b) depends upon the application of the first proviso in that section. Insofar as it relates to this case, the proviso states that the Authority shall not approve any lease "which would result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another carrier" not a party to the lease.

The proper construction of the proviso referred to above has been the subject of lengthy discussion both in the present case and in the case concerning the acquisition of control of Western by United, decided this same day. Two important problems are presented: (1) Whether or not *any* restraint of competition would prevent approval by the Authority; and (2) whether or not jeopardy to another air carrier would prevent such approval without regard to the existence of a monopoly.

In connection with the construction of the proviso, it has been urged by counsel in the case involving the acquisition of control of Western by United, that reference should be made to the debates on the floor of the Senate. As indicated by Mr. Sutherland, a recognized authority on statutory construction, occasionally there has been judicial reference to the declarations of the members of legislative bodies.[7] However, such aids are but slightly relied upon, and the general current of authority is opposed to any resort thereto.[8] Moreover, certain of the most important statements in the debate concerning the proviso are, as admitted by counsel, "irreconcilable," and "inconsistent," so that little or no reliance can be placed upon these particular statements in any event.

Functions Exercised by the Administrator of Civil Aeronautics

Many of the former functions of the Authority with respect to safety regulation will now be handled by the Administrator of Civil Aeronautics. He will have charge of the entire field staff engaged in safety regulation duties, including aeronautical inspectors, engineering inspectors, and aircraft airworthiness engineers. It is his responsibility, through his technical staff in the field and in Washington, to provide for the flight testing and examination of applicants for airman certificates, the examination and flight testing of aircraft for type and airworthiness certificates, the examination of aircraft manufacturers' facilities to determine whether a production certificate should be issued, the examination of equipment and facilities of aircraft repair stations and flying and mechanic schools to determine whether they are qualified to receive certificates, and to maintain a continuous general supervision over the holders of all of these certificates to make certain that their original qualifications are maintained.

The Administrator also has substantial jurisdiction over the enforcement of the safety provisions of the act and of the Civil Air Regulations. There are five methods of enforcing civil air regulations: (1) A reprimand, (2) the transmission of information concerning violations to the Department of Justice for the initiation of proceedings to collect a civil penalty, (3) the compromise of a civil penalty, (4) the suspension or revocation of a certificate, and (5) the denial of the renewal of a certificate upon the expiration thereof.

The first three of these methods of enforcement will now be exercised by the Administrator, although in case of methods (2) and (3) it is anticipated that some channels for the interchange of comments upon the proposed action between the Board and the Administrator will be established. Under such an arrangement, if the Administrator determines to recommend that a civil penalty be imposed upon a violator, the Administrator will transmit the reported violation to the Department of Justice, after consulting with the Board, for the initiation of judicial proceedings to collect the civil penalty incurred. Also, it will be the duty of the Administrator, after consulting with the Board, to accept or reject any compromises of civil penalties which may be offered.

Method (4) is to be exercised by the Board whether such action is taken after the statutory hearing or on a waiver of hearing by the violator. It is expected, however, that, in most cases, the Administrator's staff will present the evidence to the Board or its examiners in suspension and revocation cases where the suspension or revocation is recommended by the Administrator. If the Administrator or his staff determines that the holder of a safety certificate has failed to maintain the original qualifications for the certificate and that the suspension or revocation of the safety certificate is necessary, it will be his duty to bring the matter to the atten-

tion of the Board in order that it may take the necessary action to suspend or revoke the certificate.

On the other hand, if facts come to the attention of the Board from sources other than the Administrator (such as through the investigation of accidents) which indicate the necessity for suspending or revoking the safety certificate, the Board will, of course, initiate the proper proceedings on its own motion. The temporary suspension of certificates in emergency, as authorized by the act, may be effected by the Administrator. Promptly after such a temporary suspension has been effected, an opportunity for a hearing before the Board or one of its examiners must be given to the holder of the certificate.

While method (5) is to be exercised by the Administrator, a petition for a reconsideration of a denial by the Administrator of the issuance or renewal of an airman certificate is to be heard and decided by the Board, although it is expected that the Administrator's staff is to present evidence to the Board at the hearing. All such petitions should, therefore, be filed with the Board.

It will be the duty of the Administrator, through his inspection staff, to investigate violations of the safety provision of the act and of the safety standards, rules, and regulations, and through his legal staff in Washington, to take such of the above-mentioned steps as seem to him to be necessary.

In performing his function relating to air safety, the Administrator will be bound by the safety standards, rules, and regulations prescribed by the Board. The Board will determine and issue in the form of regulations, the qualifications for securing the various types of safety certificates and will prescribe the safety standards, rules, and regulations which govern the operation of aircraft and other aeronautical activities. Of course, the Administrator may, and undoubtedly he will, recommend to the Board the issuance and amendment of such rules and regulations as his experience indicates to be necessary. On the other hand, the Board will take the initiative in prescribing new or amended safety standards, rules, and regulations where the Board feels that such action is required. Thus, insofar as safety regulation is concerned, it can be said generally that the Board prescribes the standards, rules, and regulations, and that the Administrator is primarily charged with the duty of taking or recommending action to carry them into effect.

As indicated above, the Administrator is also responsible for the administration of the Civilian Pilot Training Act of 1939; and for the recording of title to aircraft and for the registration of aircraft.

All of the functions of the Administrator, unlike those of the Board, are performed under the general direction and supervision of the Secretary of Commerce.

On page 298, in convenient parallel columns, appears a detailed statement of the way in which certain safety regulation functions are to be exercised.

[7] These occasions generally are considered as exceptions to the established rule. See *United States* vs. *St. Paul, Minn. & Man. R. Co.*, 247 U. S. 310, holding that some weight may be given to such statement where they are in the nature of a supplement to a committee's report; *Fed. Trade Com.* v. *Rotadam Co.* 283 U. S. 643, 650, holding that where, throughout the consideration of particular legislation, there was common agreement in the debate as to the great purpose of the act, that fact may properly be considered in determining what that purpose was and what were the evils sought to be remedied; and *Wright* v. *Vinton Branch*, 300 U. S. 440, holding that enlightenment may be sought from explanations given on the floor of the Senate and House by those in charge of the measure.

[8] Lewis' Sutherland, Statutory Construction, vol. 2, sec. 470, p. 882.

It is recognized that there is a basic uncertainty and confusion as to the definition of a monopoly,[9] and much of the difficulty surrounding the construction of the proviso centers upon the meaning of this term.

At common law the term related to an exclusive privilege of trade or operation created by State grant or charter.[10] In modern usage, most of the definitions suggested by the courts fall into two general categories, one of which defines the term "monopoly" as embracing any combination the tendency of which is to prevent competition in its broad and general sense, and to control prices to the detriment of the public,[11] and the other holding that the word "monopoly" means the control of a particular business or article of trade, without regard to the results which may flow therefrom.[12] Of course, it is recognized in either case that a monopoly, in addition to applying to an entire trade or business, has both a geographical and distributive significance, and applies to any part of the United States as distinguished from the whole and to any part of the classes of things forming a part of interstate commerce.[13]

If the first definition of the word "monopoly," which is essentially descriptive of a result, is applied to the proviso in section 408 (b), the words immediately following, "and thereby restrain competition," would be repetitious and of no effect since that definition by its terms includes the factor of restraint of competition. On the other hand, if the second definition, which treats "monopoly" as a condition embodying a particular degree of control, is applied, the remaining words of the proviso would have a definite meaning and effect, since it would not be a foregone conclusion that such a condition would restrain competition. It is a generally accepted rule of statutory construction that every word of a statute is to be given

[9] See, 50 Years of Sherman Act Enforcement, 49 Yale L. J. 284, 285; Robert H. Jackson and Edward Dumbauld, Monopolies and the Courts, 86 U. of Pa. L. Rev. 231, 237.

[10] *Raney* v. *Montgomery County Com'rs.*, 170 Md. 183, 183 Atl. 548, 552 (quoting Webster's New International Dictionary).

[11] *State* v. *Eastern Coal Co.*, 29 R. I. 254, 70 Atl. 1, 5; *Pocahontas Coke Co.* v. *Powhatan Coal and Coke Co.* 60 W. Va. 508, 56 S. E. 264; *Walter A. Wood Mowing and Reaping Co.* v. *Greenwood Hardware Co.*, 75 S. C 378, 55 S. E. 973, 974 (quoting definition in 20 Ency. of Law 846); *Lynch* v. *Magnavox Co.*, 94 Fed. (2d) 883 *Love* v. *Kozy Theater Co.*, 193 Ky. 336, 236 S. W. 243.

[12] *Hood Rubber Co.* v. *U. S. Rubber Co.*, 229 Fed. 583, 588, holding that the word "control" is equivalent to "monopolize" in determining the sufficiency of an indictment under sec. 2 of the Sherman Act; *Burrows* v. *Interborough Metropolitan Co.*, 156 Fed. 389, 392; *United States* v. *Whiting*, 212 Fed. 466; *Peto* v. *Howell*, 101 Fed. (2d) 353. The same principle appears to have been expressed in other cases which explain that "monopoly" is merely the concentration of business in the hands of a few. *National Fire Proofing Co.* v. *Mason Builders Ass'n.*, 169 Fed. 259, 264; *American Biscuit and Manufacturing Co.* v. *Klotz*, 44 Fed. 721, 724. According to another case, the popular meaning of "monopoly" at the present day seems to be the, sole power (or power largely in excess of that posessed by others) of dealing in some particular commodity,. or at some particular market or place, or of carrying on some particular business. *United States* v. *American Naval Stores Co.*, 172 Fed. 455, 458; see also, *Davenport* v. *Kleinschmidt*, 6 Mont. 502, 529, 13 Pac. 249.

[13] *Indiana Farmers' Guide Publishing Co.* v. *Prairie Farmer Publishing Co.*, 293 U. S. 268, 279; *Peto* v. *Howell*, 101 Fed. (2d) 353.

meaning, for it cannot be assumed that particular words were used without some purpose. It is concluded, therefore, that the word "monopoly," as used in the first proviso of section 408 (b), refers to a particular degree of control of air transportation, or any phase thereof, in any territory or section of the country. It follows that restraint of competition is a factor; insofar as the application of the proviso is concerned, only if it results from that degree of control which the Authority decides constitutes a monopoly of air transportation.

The position that jeopardy to another air carrier is sufficient to prevent the approval of a lease even though a monopoly or monopolies will not result, is opposed to the ordinary rules of grammatical construction. The portion of the proviso beginning with the words "which would result" is an adjective clause modifying the objects of the verb "shall approve." That part of the clause reading, "and thereby restrain competition or jeopardize another air carrier," is unbroken by punctuation, and this fact, together with its physical position in the clause, makes it clear that the verb ("would) jeopardize" is modified by the adverb "thereby" in the same manner as the verb "(would) restrain." The adverb "thereby," meaning "by this means," can only refer to the words "monopoly or monopolies," and it follows that jeopardy is not a factor to be considered unless it is brought about by a monopoly or monopolies. The rules of grammar are to be followed unless the legislative intent clearly would be violated or an absurdity would result.[14]

There is nothing unusual about including jeopardy to another air carrier as a factor to be considered in connection with the creation of a monopoly. Injury to third parties not participating in a combination always has been a factor to be considered, in connection with the monopolization of trade or commerce, under the Sherman and Clayton Acts.[15] It is reasonable, therefore, to conclude that, in the absence of restraint upon competition, the thing prohibited by the proviso in this case is a lease which results in creating a monopoly and thereby jeopardizes another air carrier.

In deciding upon the application of the proviso in section 408 (b) to the agreement, therefore, it is necessary to determine whether it will result in giving one of the parties the degree of control of air transportation, or some phase thereof, within a particular section of the country, necessary to constitute a monopoly therein.

The agreement contains no provisions for the transfer of stock or any other action which might establish the control of either applicant by the other or foreclose the possibility of further competition between the two. To the contrary, it provides specifically that the leased

[14] *Treat* v. *White*, 181 U. S. 264; *United States* v. *Goldenberg*, 168 U. S. 95.

[15] Sec. 4 of the Clayton Act (15 U. S. C. A., sec. 15) expressly provides for suits by persons injured "by reason of anything forbidden in the antitrust laws." A similar provision was formerly contained in the Sherman Act, ch. 647, sec. 7, 26 Stat. 210.

planes shall be operated and controlled by the crews of the lessee while being operated over its own route, in each instance. There is nothing inherent in the agreement which compels the conclusion that the existing relationship between Western and United will be changed

UNITED MAIL RATES

(Continued from page 300)

and Washington. Route No. 17 provides for services between Cheyenne Wyo., and Denver, Colo.

For the period beginning October 27, 1938, the date upon which United filed a petition for a review of its rates, and terminating on June 30, 1940, the Authority today fixed base rates of 31 cents per airplane-mile for route No. 1; 33 cents per mile for route No. 11; 36 cents per mile on route No. 12 and 37 cents per mile on route No. 17. These rates substitute for those established March 11, 1935, for these routes by the Interstate Commerce Commission and are to be computed on the same basis as the Commission rates. Those Commission rates were 31, 27, 33⅓, and 29 cents per pay-mail-mile for routes No. 1, 11, 12, and 17, respectively.

In fixing rates to be effective July 1, 1940, the Authority in this case follows the precedent set up in the Northwest Airlines decision in abolishing weight credit trips and computes the rate upon the basis of all miles flown with air mail. After that date the base rate to be paid United for route No. 1 will be 18 cents per airplane mile and 19 cents per airplane mile for route No. 11. These rates apply when the average load per plane computed on a monthly basis is 300 pounds or a fraction thereof. When the average load exceeds this figure, United will be paid seven-tenths of a cent per mile for each additional 25 pounds of mail or fraction thereof.

For route No. 12, after July 1, the base rate is fixed at 36 cents per airplane mile and for route No. 17 it is fixed at 37 cents. For loads in excess of 300 pounds the operator will receive 2½ percent of the respective base rates for each additional 25 pounds of mail or fraction thereof.

A spokesman for the Authority pointed out that the difference between the new Authority policy of fixing its rates for all miles flown with air mail in this case makes such a difference that it is difficult to make a direct comparison between the above rates and those fixed by the Interstate Commerce Commission. It is estimated by the Authority on the basis of schedules currently operated United will receive mail payments on a basis of 17,269,704 airplane-miles per year. This is more than 60 percent greater than the annual total which would be credited as "pay-mail-miles" which would be used in computing payments under the Commission formula. (For full text of opinions, see p. 325.)

under the operation thereof. It is clear from the evidence that all revenue from trips operating between Los Angeles and points east of Salt Lake City on United's route No. 1 will accrue to each carrier strictly on the basis of that portion of the trip made over their respective routes. Western retains control over the rate to be charged between Los Angeles and Salt Lake City, and remains entirely free to solicit business for its route in competition with all carriers entering the city of Los Angeles, including United, and the same is true of United with respect to its routes.

Officers of the intervener testified that in their opinion the agreement would result in the domination and control of Western by United. On the other hand, the president of Western stated that his company had not been dominated by United in the past, in spite of the importance of the through business to Western, and that when differences of opinion arose concerning the operation of connecting schedules, etc., Western had prevailed in most of the cases that he remembered. In his opinion, the agreement would not create any domination or control.

There is no evidence of record indicating that Western is controlled by United, or that the latter dictates the managerial policies of the former. No Western stock is owned by United or its officers and directors, and no United stock is owned by Western or its officers and directors, and there is no provision in the agreement for any change in stock ownership.

In this connection, the intervener also contends that the provisions governing rental charges will enable United to subsidize Western's operations between Los Angeles and Salt Lake City. The two strongest arguments in support of this contention are: (1) That the agreement omits any rental charge based on the depreciation of the airplanes subject to the terms of the lease, and (2) that the rental charges fixed for overhaul are too low.

With respect to the absence of a depreciation charge on the airplanes to be leased under the agreement, a charge which has been included in all previous leasing agreements between the parties (including certain previous interchange agreements which never became effective), the Applicants explain that the depreciation of airplanes continues whether or not they are actually in use; that since depreciation does not depend upon the number of miles flown, and since the agreement contemplates the exchange of equipment on an equal basis, such a charge was considered unnecessary. However, Western

owns only two sleeper planes, whereas United owns nine such planes. All of the sleeper planes owned by both parties are subject to the terms of the agreement, and since there is nothing in the agreement to prevent an increase in the schedules serving Los Angeles thereunder, it is apparent that the exchange of equipment need not always be on an equal basis. It is also clear that if United should furnish more planes than Western for the Los Angeles service, the absence of a depreciation charge on such planes would operate to the advantage of Western and might be a sufficient inducement to discourage competition and increase the possibility of United exercising some control over the policies of Western. If the agreement is permitted to include provi-

sions which are too favorable to Western, the factors weighing against the exercise of independent judgment by Western naturally are increased.

Under section 408 (b) of the act, the Authority is empowered to approve any lease "upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe." In order to avoid the possibility of any control of Western by United in the manner suggested, the Authority will condition its approval of the agreement upon the adoption of a rental charge covering the depreciation on sleeper planes during the time they are leased under the agreement.

With respect to overhaul of planes and engines, the agreement provides for a charge of $6.67 per hour of operation on each plane leased thereunder, and a charge of $2.46 per hour of operation for each engine. It was testified that the intervener's overhaul cost per hour of operation for Douglas airplanes averages approximately $10, and it is contended that the overhaul charge fixed in the agreement must therefore be lower than the actual cost of such overhaul. No facts appear in the record concerning the overhaul expense incurred by air lines other than the intervener, and in view of the numerous factors governing the cost of overhaul which may vary under particular circumstances, the evidence concerning the cost to the intervener alone can hardly be considered controlling.

The intervener also points out that a prior agreement between the same parties, which never became effective, contained an overhaul charge for airplanes at the rate of $11.44 for each hour of operation. The record shows that a different period was used to determine the actual cost of overhaul in that case, and the rate contained in an agreement which never became effective is not particularly helpful in determining what the rate should be.

The overhaul charge for engines is subject to the same comments.

We find that the evidence in the record does not establish that the overhaul charges fixed in the agreement are unreasonably low, or that any measure of control is to be apprehended from this source.

We find, therefore, that the agreement, with the modifications prescribed above, will not operate to give United control over Western, and, since no additional control over air transportation is involved, that it will not result in creating a monopoly.

Since the evidence does not establish that the agreement will result in creating a monopoly, the first proviso in section 408 (b) is without effect in the present case. As previously indicated, by the terms of the proviso a lease which restrains competition or jeopardizes another air carrier is prohibited only in the event that either one or both of such results will follow from the creation of a monopoly or monopolies.

There is no evidence in the record to establish that the agreement will violate any other condition of section 408, or any other section of the act.

On the basis of the foregoing findings of fact, and the facts appearing in the record, we find that the applicants are entitled to approval of the agreement under the terms of sections 408 (b) and 412 (b) of the act. Of course, the approval of the agreement does not extend to

other supplemental agreements which may hereafter be entered into pursuant to the terms of this agreement.

An appropriate order will be entered.

Hinckley, Branch, Ryan, Mason, and Warner, Members of the Authority, concurred in the above opinion.

ORDER

United Air Lines Transport Corporation (hereinafter called "United") and Western Air Express Corporation (hereinafter called "Western") having filed with the Authority, pursuant to section 412 (a) of the Civil Aeronautics Act of 1938, an agreement executed March 17, 1939, providing for the interchange of sleeper airplanes at Salt Lake City, Utah, and having filed application for the approval of said agreement by the Authority under section 408 (b) and/or section 412 (b) of the act, and

A public hearing having been held; and

The Authority, upon consideration of the record in the proceeding, having issued its opinion containing its findings of fact, conclusions, and decision, which is attached hereto and made a part hereof; and

Finding that its action in this matter is necessary pursuant to said opinion:

IT IS ORDERED, That said agreement be, and the same is, approved: *Provided, however*, That (1) this approval shall be conditioned upon the adoption by the parties to the agreement of a rental charge covering the depreciation on the sleeper airplanes leased under the agreement, based upon the hours of operation thereunder; (2) this approval shall not be deemed a determination or finding that any of the rentals or charges provided in the agreement are fair and reasonable; (3) this approval shall not be deemed to be a waiver of, or exemption from, any requirement in the competency letters of United or Western that said air carriers keep available at all times a sufficient number of aircraft in order to maintain their schedules; and (4) that this approval shall terminate if the Authority shall at any time find that the continued operation of the parties under said agreement or any of its provisions would be adverse to the public interest, or in violation of the Civil Aeronautics Act of 1938 or of any rule, regulation, or order of the Authority now or hereafter in effect.

DOCKET NO. 270

UNITED AIR LINES TRANSPORT CORPORATION—ACQUISITION OF WESTERN AIR EXPRESS CORPORATION

In the matter of the application of United Air Lines Transport Corporation under section 408 (b) of the Civil Aeronautics Act of 1938, for approval of a proposed acquisition of control of, and of merger with or purchase of all the assets of, Western Air Express Corporation.

Decided June 19, 1940

Found that the proposed acquisition of control, and subsequent merger or purchase of the assets, of Western Air Express Corporation by United Air Lines Transport Corporation would not be consistent with the public interest, and the application for approval therefore is denied.

APPEARANCES:

Paul M. Godehn and *Frank E. Quindry*, for United Air Lines Transport Corporation, the applicant.

Howard P. Fabian and *Quigg Newton, Jr.*, for Western Air Express Corporation, intervener.

Gerald B. Brophy, Horace G. Hitchcock, and *John T. Lorch*, for Transcontinental & Western Air, Inc., intervener.

Oscar A. Trippet and *Leslie Craven* for minority shareholders committee of Western Air Express Corporation, intervener.

George C. Neal and *Hubert A. Schneider* for the Civil Aeronautics Authority.

OPINION

BY THE AUTHORITY:

On July 7, 1939, United Air Lines Transport Corporation, hereinafter called "United," filed with the Authority, under section 408 (b) of the Civil Aeronautics Act of 1938, hereinafter referred to as the "Act," an application for approval of the acquisition of control by United of Western Air Express Corporation, hereinafter called "Western," and approval of the merger of Western into United or the purchase by United of all of the assets of Western.

Transcontinental & Western Air, Inc., hereinafter called "TWA," the minority shareholders committee of Western Air Express Corporation, hereinafter referred to as the "minority committee," and

Western filed petitions for leave to intervene, which were granted by orders of the Authority dated November 28, 1939, and December 22, 1939. A hearing was held before the Hon. Roscoe Pound as special trial examiner on the dates of January 8 to 12, inclusive, January 15 and January 16, concluding with oral argument before the examiner on January 17, 1940. The examiner's report denied a motion of the minority committee to strike portions of the application, and recommended: (1) That the application be approved; (2) that the matter be retained upon the docket of the Authority in order to pass upon the exact method of carrying out the approved acquisition or merger, as between the plans proposed in the application, in order to assure fairness to the minority shareholders of Western without overcapitalization, and in order otherwise to protect any interests which may be proved to be involved in the final consummation. The report was served upon all of the parties and exceptions thereto were filed by TWA and the Minority Committee. Oral argument was held before the authority on May 8, 1940.

United operates route No. 1 from New York, N. Y., and Newark, N. J., to San Francisco and Oakland, Calif., route No. 11 from Seattle, Wash., to San Diego, Calif., route No. 12 from Salt Lake City, Utah, to Seattle and Spokane, Wash., route No. 17 from Denver, Colo., to Cheyenne, Wyo., and a route from Seattle, Wash., to Vancouver, British Columbia, Canada. Western operates route No. 13 from San Diego, Calif., to Salt Lake City, Utah, and route No. 19 from Salt Lake City, Utah, to Great Falls, Mont. The merger or purchase of assets for which approval is sought in this proceeding would result in consolidating the fourth largest of the 17 domestic air carriers with the eighth largest from the standpoint of route miles, United being one of the three transcontinental operators and Western one of the major north-south systems. The combined company would rank second in route miles.

The decision in this case is governed by the terms of section 408 (b) of the act, which provides as follows:

> Any person seeking approval of a consolidation, merger, purchase, lease, operating contract, or acquisition of control, specified in subsection (a) of this

section, shall present an application to the Authority, and thereupon the Authority shall notify the persons involved in the consolidation, merger, purchase, lease, operating contract, or acquisition of control, and other persons known to have a substantial interest in the proceeding, of the time and place of a public hearing. Unless, after such hearing, the Authority finds that the consolidation, merger, purchase, lease, operating contract, or acquisition of control will not be consistent with the public interest or that the conditions of this section will not be fulfilled, it shall by order, approve such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe: *Provided*, That the Authority shall not approve any consolidation, merger, purchase, lease, operating contract, or

acquisition of control which would result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party to the consolidation, merger, purchase, lease, operating contract, or acquisition of control * * *.

The application of United is to be approved, providing the other conditions in section 408 are fulfilled, unless it is found that the proposed acquisition of control and the subsequent merger or purchase of assets will not be consistent with the public interest. "Public interest" as thus used in the act is not a mere general reference to public welfare, but has a direct relation to definite statutory objectives. Thus, section 2 of the act directs the Authority to consider certain specific objectives as being in the public interest. We are required, *inter alia* in our decisions, (*a*) to encourage the development of an air transportation system properly adapted to the present and future needs of our foreign and domestic commerce, the Postal Service and the national defense; (*b*) to foster sound economic conditions in air transportation and to improve the relations between, and coordinate transportation by, air carriers; (*c*) to promote adequate, economical and efficient service at reasonable charges, without unfair or destructive competitive practices; and (*d*) to preserve "competition to the extent necessary to assure the sound development of an air transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense." We proceed to the examination of the evidence in this case in the light of the criteria of public interest thus provided by the act.

United seeks to establish that the approval of the application would advance the public interest by contending, (1) that the transcontinental service between Los Angeles and points east of Salt Lake City on United's route No. 1 would be materially improved, (2) that the unification of properties and operations would result in greater efficiency and economy, and (3) that local service would be better, and local traffic would be promoted to a greater extent, than it is at present.

The improvement of service to transcontinental passengers traveling to and from Los Angeles via Salt Lake City is the most important of the considerations urged by the applicant. Evidence in the record establishes that at the present time Los Angeles passengers on several sleeper flights are compelled to change planes at Salt Lake City at inconvenient hours by virtue of the fact that a connecting service is being rendered. The examiner takes the position that "it is so distinctly in the public interest to do away with this inconvenience to

travelers by an important transcontinental route that any appropriate means of bringing about that result would seem justifiable," and in recommending approval of the application, he emphasizes this point.

Although Western and United have operated a transcontinental service to and from Los Angeles via their connection at Salt Lake

City for many years, it never has beeen a through service, and the application in this case, therefore, contemplates the establishment of a service inherently different from the service which has existed heretofore, namely, a service by one carrier instead of two. In this connection, it must be recognized that sleeper service from New York and Chicago to Los Angeles is already available to transcontinental passengers over two other lines, both American Airlines, Inc., and TWA operating through sleeper planes, although through service from Omaha, Nebr., and Denver, Colo., is not available on any other lines.

The unification of Western and United properties into one company is not the only means of eliminating passenger inconvenience at Salt Lake City due to the change of planes. Another means to the same end is available which will avoid certain consequences—with which we shall deal later in this opinion—involved in the proposed merger or purchase of assets. The Authority this day has by order approved an agreement between Western and United for the interchange of aircraft which will, for all practical purposes, accomplish the elimination of the inconvenience to passengers just as effectively as the proposal in this case. We do not suggest that the approval of the interchange agreement can be relied upon as the basis for a denial of the application in this case, but in balancing all of the factors bearing upon the public interest, the availability of other means of accomplishing essentially the same beneficial results from the standpoint of the quality of the service rendered to the traveling public becomes an important consideration.

In support of its contention that the merger or purchase of assets would result in increased efficiency, the applicant states that Western has a shortage of equipment which would be corrected if Western's routes were operated by United.

The applicant urges that a shortage is established by the fact that Western has agreements with United for the temporary leasing of planes in emergencies. The leasing of equipment by air carriers, however, is not an unusual practice, certain types of leasing arrangements having become quite common, and the arrangement between United and Western can hardly be relied upon to prove a shortage of equipment.

Neither does it follow that Western's equipment is inadequate because Boeings were used temporarily while the Douglas equipment was being overhauled, or because spare planes are not available for extra sections to meet the occasional demand for more seats. Temporary shortages of equipment and the inability to meet the requirements of exceptionally heavy traffic are not uncommon in air transportation. It is manifest that a demand beyond the capacity of facilities locally available occasionally will develop at major points throughout the country. In this case, no definite figure, or even an estimate, has been given as to the amount of business lost as a result

of a shortage of seats between Los Angeles and Salt Lake City. It was admitted that frequently the equipment available at Salt Lake City could not fill the demand for transportation east of that point, and no one seemed to know how frequently passengers who sought through transportation might still have been unable to secure accommodations for the trip east from Salt Lake City even if seats from Los Angeles had been provided. It is perhaps significant that no testimony was introduced to show that passengers had been refused at eastern points because of a lack of accommodations on Western's flight from Salt Lake City to Los Angeles. One of the witnesses testified, moreover, that if a sufficient demand arose, Western could and would supply equipment for extra sections.

The applicant points out that Western does not maintain an engineering department, a flight research department, a radio research department, or a medical department, as does United. The maintenance of such departments is, however, typically the practice of the large air carriers. We are not shown that any other air carrier of Western's size maintains such departments, and it is not an uncommon policy of the smaller carriers to obtain from the larger companies the findings and benefit of their research units.

The record indicates that Western's arrangements for overhaul and repairs of equipment are entirely satisfactory, and from the testimony as a whole, it does not appear, as urged by United, that Western has been slow to adopt new ideas or improved equipment. Western obtained sleeper planes soon after they were introduced, and the installation of improved types of engines in the few Western planes not so equipped was in immediate prospect at the time of the hearing.

The applicant states that a unified operation would make it possible to fly Los Angeles trips over Salt Lake City during adverse weather conditions. However there were only 15 occasions last winter when United did not land San Francisco trips at Salt Lake City. As to the applicant's suggestion that the dispatching of planes at Salt Lake City might be improved somewhat, there was testimony to the effect that the present operation works very smoothly.

Much of the argument addressed to these points by the applicant would apply wherever connections are made by any two air carriers, and would in fact seem calculated to support the merging of all the air lines of the United States into a single system.

Much attention has been devoted to a discussion of the economies which would result from the consolidation of Western and United. With two or three exceptions, however, no estimate of the amount of the savings contemplated was submitted. The applicant stated that a United subsidiary could lease to others the hangar and office space at Burbank which Western now rents for $6,000 per year. On the basis of a comparison of the actual pay roll of Western during

June 1939, with an estimate of the pay roll which United would have needed to carry on the same operations during an average month in 1939, it is claimed that a saving of $86,411.52 per year in pay roll expense would be realized as a result of a merger of the two companies.

Without presenting any figures, the applicant contended that economies would be realized on various reports, tax returns, counsel fees, accounting, billing, and auditing procedures, etc. On cross-examination, however, it was admitted that in almost every instance the savings suggested would be "nominal," with the exception of the saving in personnel. It was testified that United would retain the personnel presently employed by Western, including the number over and above those United estimates it would need to operate Western's routes, so that the contemplated saving in this category would not accrue until an expansion in United's operations created a need for additional personnel, or until there have been withdrawals of United personnel by resignation or otherwise. Altogether, on the question of economies, we are in agreement with the examiner that, taken in the aggregate, the suggested economies have some significance but can hardly be said to amount to more than "some cumulative support" to the primary factor urged by the applicant, that of improved convenience to transcontinental passengers, and we so find.

On the question of the improvement of local service on Western's routes, the applicant relies upon statements by one of its witnesses to the effect that United would furnish stewardess service on route 19, and would employ four full-time meteorologists at Burbank (the Los Angeles airport), and that the dispatch of planes at Salt Lake City would be smoother under a single company. It appears from the record, however, that Western has arranged for a meteorological service from the California Institute of Technology, and proposed to make other important improvements in its present operation. The evidence respecting the dispatch of planes at Salt Lake City already has been discussed, and the general question of local service will be considered in more detail later in this opinion

Although it was not stressed in the applicant's brief, there was testimony to the effect that a combined operation would be of some advantage to the national defense by affording an improved service between the aircraft manufacturing districts near Los Angeles and those in the East, via Salt Lake City, and by causing an enlargement of United's repair facilities at Cheyenne, Wyo. We have sought to consider every possible way in which the proposed merger or purchase of assets might bear upon the national defense, and we find, as did the examiner, that a denial of the application will not affect the national defense.

Although the elimination of inconvenience to travelers is an important factor to be considered in determining whether the proposed

merger or purchase of assets would be in the public interest, it is by no means the only factor to be considered, as the examiner's report recognizes. Thus, as we have noted, section 2 of the act provides, among other things, the following criteria of public interest:

> (a) The encouragement and development of an air transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;
>
> (d) Competition to the extent necessary to assure the sound development of an air transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

Any merger or other form of acquisition, therefore, which, by stifling normal competition or by encouraging destructive competition, would tend to retard or prevent the development of an air transportation system properly adapted to the present and future needs of the Nation must be deemed inconsistent with the public interest. We accordingly proceed to examine the effect of the proposed merger or purchase of assets in the light of the standards of public interest set forth in the above-quoted subsections.

First, the acquisition of control and subsequent merger or purchase of assets proposed by the application in this case would give to United direct access to the entire Pacific coast area for the origination of transcontinental traffic. From Salt Lake City, United at the present time has two direct routes to important Pacific coast points, route No. 1 extending to San Francisco, Calif., and route No. 12 to Portland, Oreg., and Spokane and Seattle, Wash. The proposed merger or purchase of assets would add a third, a direct route from Salt Lake City, Utah, to Los Angeles, Calif. United would then have direct transcontinental routes to all four major West coast metropolitan areas, whereas no other air carrier has direct entry to more than two of such areas. This advantage is particularly significant in view of the fact that United operates the only north and south route on the Pacific coast, route No. 11 extending from San Diego, Calif., to Seattle, Wash., via Los Angeles, San Francisco, and Portland.

The extent of United's system along the Pacific coast carries with it, as shown by the record, much greater contact with Pacific coast passengers than that enjoyed by any other carrier entering this territory. The addition of Western's system, composed of routes Nos. 13 and 19, from San Diego, Calif., to Great Falls, Idaho, would extend United's control over western traffic, and its advantage with respect thereto, eastward to the Rocky Mountains.

Such an increase in the size and control of United in this large area would adversely affect the existing competitive opportunities for western business and would greatly increase United's advantage with respect to such business. According to the record,[1] American Airlines,

[1] Mileage figures obtained from the Official Aviation Guide, incorporated into the record by reference under a stipulation signed by counsel on January 8, 1940.

Inc., has 740 route-miles west of El Paso, Tex., Northwest Airlines, Inc., has 994 route-miles west of Billings, Mont., and TWA has 1,041 route-miles west of Albuquerque, N. Mex. All three combined have a total of 2,775 route-miles in the area west of these points, as compared with United's total of 3,068 route-miles west of Cheyenne, Wyo. If Western's route mileage of 1,079, which excludes that part of route No. 13 south of Los Angeles, is added, United's total would be 4,147 route-miles in this territory. The record also shows that the combined population of the cities in this area served by American Airlines, Inc., is 1,430,921, by Northwest Airlines, Inc., 899,012, and TWA, 2,300,580. United serves a combined population of 3,759,040 in the same area, and if the additional points on Western's system, with a combined population of 298,526, are included, the total population of the municipalities served by United in this area would almost equal that served by the other three air carriers combined. With

respect to business in the Los Angeles region, a survey of the average daily volume during the month of August 1939 [2] disclosed that of a total of 442.4 passengers going to and from this region each day, 244.2 used United. If the 76.9 passengers using Western were added thereto, United would have carried 321.1 passengers daily, or approximately 72 percent of the total. Of the average of 9,820.6 pounds of mail per day entering or leaving this region, 2,593.7 pounds were carried by United, and 2,368.6 pounds by Western. If the mail carried by Western were added to that carried by United, United would have carried approximately 50 percent of the mail. In addition, if the application were approved, United would obtain all of the business to and from the important cities of San Diego, Calif., and Salt Lake City, Utah, since United and Western are the only air carriers serving these two points.

Secondly, if the merger or purchase of assets were approved, the only north-south route west of the Rocky Mountains which is independent of the transcontinental air carriers would become a part of the United system. Western connects with all four air carriers entering this western territory, and it is the only established route capable of offering competition to United between the Los Angeles region and points in the north such as Spokane, Wash., and between Salt Lake City and the same northern points, including Seattle, Wash. To permit the elimination of an independent air carrier in such a favorable position to develop local traffic and to serve as a north-south trunk in competition with the only other air carrier connecting southern California and Salt Lake City with points in the north would, in the opinion of the Authority, be undesirable at this stage in the development of a properly balanced system of air transportation.

[2] P. 8 of exhibit No. 42.

The record not only indicates that Western is financially self-sufficient at the present time, but also that its organization is, from an operating standpoint, active and aggressive in the promotion of new business in the west. The company has initiated promotional rates, flights over scenic points, and similar promotional policies. It does not seem an unreasonable assumption that a local western organization (especially under competitive stimulus in north-south traffic) may be expected to promote local service more aggressively than would a large transcontinental system.

Much controversy developed in the hearing as to whether Western should be considered a local or regional air line, or whether it is properly regarded as a link in the operation of United's route No. 1 and merely "the last leg of a transcontinental journey." Of course, United's chief interest lies in that section of Western's route No. 13 between Salt Lake City and Los Angeles, whereas the minority committee stresses the importance of route No. 19 to Great Falls, Mont., and the possible extension thereof to Lethbridge, Canada. It appears that approximately 60 percent of Western's revenues are derived from operations as a local carrier serving the Far West, and about 40 percent from the United connection at Salt Lake City. From this and other facts of record bearing on the question, it necessarily appears that Western is both a transcontinental link and a regional carrier,

playing an important role in each capacity. The evidence fails to convince us that United could be expected to furnish a more effective or economical local service than that now provided by Western.

The record indicates that some competition now exists between Western and United for north and south business, and that it will increase as air transportation develops. The intensity or the effectiveness of competition is not to be confused with the existence of a competitive situation, and it is not necessary that rates and times of departure be approximately the same, as urged by the applicant, in order to establish that competition exists. That two companies offer a comparable service between the same points is enough to establish the existence of competition.

Western carried a total of 2,065 passengers between Los Angeles and San Diego during the quarter ending September 30, 1939, and United carried 708 passengers between these two points during the same period. Although the times of departure are different, the service offered by the two companies is comparable in all other respects, and it appears evident that Western and United are in direct competition between these two points.

The distance from Los Angeles to Spokane, Wash., and from Salt Lake City to Spokane as well as to Seattle, is approximately the same by the alternate routes offered by United and Western, the former via route No. 11 from Los Angeles or route No. 12 from

Salt Lake City, and the latter via its connection with Northwest Airlines, Inc., or its connection with United at Salt Lake City. Western carried only 114 passengers bound to or from Spokane during 1939, and about 50 going to or from Seattle, but the fact that some passengers have used Western for travel in this direction, in spite of inconvenient connecting schedules in many instances, indicates the possibility of developing potential north and south traffic for this naturally competitive route.

The distance from Salt Lake City to the Twin Cities also is approximately the same over Western and Northwest Airlines, Inc., as over United and Mid-Continent Airlines, Inc. At the present time, the record shows, passengers are using both routes. The same is true of the alternate routes to Winnipeg, Canada.

Western not only offers lower round-trip rates on its own route, but the record shows that the round-trip fares to the northern points already referred to, which are reached by connecting with Northwest Airlines, Inc., are lower than the round-trip fares established by United to the same points. Witnesses for United stated that the lower round-trip fares now in effect on Western's system would not be changed after the merger or purchase of assets, even though they would be inconsistent with the rates on United's alternate routes between the same points. However, there can be no assurance that this anomalous situation would be maintained indefinitely.

The fact that Western and United maintain joint ticket and reservation offices at the points served by both companies is not necessarily inconsistent with the existence of competition. Joint ticket offices are not uncommon in the field of air transportation, and Western contributes a proportion of the expenses in every case. In at least one case the salary of the counter clerk is paid partly by West-

ern, and in two other cases Western pays a fixed charge based on the number of Western's passengers handled by the employees of the joint office. The evidence with respect to these joint offices makes it clear that the employees selling the tickets are expected to act impartially, and it was testified that Western made periodical checks in order to determine whether or not full information was being given to prospective passengers. Western maintains its own traffic men at major points on its route, and the testimony establishes the fact that these men are engaged solely in promoting business for Western. The use of salesmen is one of the chief promotional devices in developing air transportation, and the maintenance of an independent sales force is just as persuasive, insofar as the existence of competition is concerned, as the use of advertising to develop business in competition with other air carriers.

The examiner correctly points out that the Authority can permit the establishment of competing routes by the issuance of certificates

of convenience and necessity, but in the opinion of the Authority this fact can hardly be relied upon to justify the elimination of Western as an independent north-south air carrier. The Authority cannot compel the establishment of competing routes, and even if applications were forthcoming, there might be a serious question concerning the advisability of permitting another air carrier to establish and maintain a competing north-south route in this area. A parallel service is economically sound only where a sufficiently large volume of traffic is available and where a sufficient volume is not available, a high mail rate is the almost inevitable result.

In reaching a judgment on the soundness of the present proposal of the applicant, we recognize the fact that air transportation in the United States, despite its remarkable advance in the short period of its existence, is still in a stage of rapid development and expansion, and that neither the limits of that expansion nor the ultimate design of the national air map can at this time be safely predicted. The regulatory policy set forth in the act indicates that Congress was fully aware of this fact. Past experience in the air-transport industry, as in other industries affected with a national public interest, presented abundant evidence of the harmful effects of uneconomic duplication of services, unsound combinations, and undue concentration of economic power.[3] Reference to both the legislative history and to the text of the act demonstrates the congressional intent to safeguard an industry of vital importance to the commercial and defense interests of the Nation against the evils of unrestrained competition on the one hand, and the consequences of monopolistic control on the other.[4] In attaining this objective the act seeks a state of *competition* among air carriers *to the extent required by the sound development of the industry.* The maintenance of such a constructive competition, we believe, will be best served at the present state of the industry's development by a reasonably balanced system of air transportation in every section of the country.

Size alone cannot be said to be the determining factor in judging a carrier's conformity to such a balanced system. As A. A. Berle has pointed out, the village grocery store often constituted a monopoly in a local area and such competition as developed, curiously

enough, came from large-scale enterprises such as mail-order houses and chain stores.[5] It is the concentration of ownership and control which is fatal to the operation of a competitive economy. To allow one air carrier to obtain control of air transportation in the West coast area greatly in excess of that possessed by competitors would,

[3] That the mechanism of merger and consolidation was recognized as a frequently used process of centralization is made significantly clear by the substantive provisions of section 408 (b) of the act, particularly the first proviso thereof.

[4] The Public Utility Act of 1935, the Federal Communications Act, the various railway transportation acts, and the antitrust acts all were intended in part to provide legislative remedies for combinations of economic power that were believed to be detrimental to the public interest.

[5] A. A. Berle, Investigation of Business Organization and Practices IV–7 Plan Age (1938), pp. 186–7.

in our opinion, seriously endanger the development of a properly balanced air-transportation system in this region; and the elimination of the only independent north and south air carrier west of the Rocky Mountains might be expected to retard the promotion of air travel in this direction.

We find, (1) that the predominance which approval of the application in this case would give to United in the West coast region would result in a condition which would not be best suited to the encouragement and development in that region of a system of air transportation properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense, and (2) that the elimination of Western as the only independent north-south air carrier in the territory west of the Rocky Mountains would not be in accordance with the best interests of local business in that territory and would not serve to maintain and encourage competition to the extent necessary to assure the development of a properly balanced system of air transportation in that section of the country.

Insofar as jeopardy to TWA is concerned, a discussion of the evidence and the contentions of TWA with respect thereto is contained in the interchange opinion, issued this same day. While it is recognized that more detailed facts have been presented in this case and that the considerations are somewhat diffreent, a discussion of the matter herein is considered unnecessary in view of the existence of other factors weighing against the approval of the application.

Upon a full consideration of all of the evidence in the record and a careful weighing of the policies outlined by Congress in section 2 of the act, we find that the factors opposed to the public interest in this proceeding outweigh the considerations urged in support thereof. We find, therefore, on the basis of the foregoing findings of fact, and the facts appearing in the record, that the approval of United's application in this case would not be consistent with the public interest.

The meaning and effect of the first proviso in section 408 (b) of the act has been argued at great length. However, in view of our finding that the proposed acquisition of control, and subsequent merger or purchase of assets, is inconsistent with the public interest, it is unnecessary to decide this case on the basis of the proviso. A discussion of the meaning and effect of the proviso is contained in the interchange opinion, which also is being issued this day.

An appropriate order will be entered.

Hinckley, Branch, Ryan, Mason, and Warner, Members of the Authority, concurred in the above opinion.

ORDER

United Air Lines Transport Corporation having filed an application under section 408 (b) of the Civil Aeronautics Act of 1938 for approval of the acquisition of control by it of Western Air Express Corporation and the subsequent merger of the two corporations or the purchase by United Air Lines Transport Corporation of all the assets of Western Air Express Corporation; and

A public hearing having been held; and

The Authority, upon consideration of the record in the proceeding, having issued its opinion containing its findings of fact, conclusions and decision, which is attached hereto and made a part hereof; and

Finding that its action in this matter is necessary pursuant to said opinion:

IT IS ORDERED, That said application be, and the same is, denied.

DOCKET NO. 16-406 (A)-1

UNITED AIR LINES TRANSPORT CORPORATION—MAIL RATE PROCEEDING

Petition for order fixing and determining fair and reasonable rates of compensation for the transportation of mail by aircraft over routes Nos. 1, 11, 12, and 17.

Decided June 22, 1940

Fair and reasonable rates of compensation for the transportation of mail by aircraft fixed and determined.

APPEARANCES:

Paul M. Godehn and *Frank E. Quindry*, for petitioner.

John R. Curry and *George C. Neal*, for Economic Compliance Division of the Civil Aeronautics Authority.

OPINION

BY THE AUTHORITY:

This proceeding was instituted by petition filed October 27, 1938, by United Air Lines Transport Corporation, herein referred to as petitioner, for an order fixing and determining the fair and reasonable rates of compensation for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, over routes Nos. 1, 11, 12, and 17. A hearing on said petition was held before the Authority on April 24, 25, 26, 27, and 28, 1939.

Petitioner holds a certificate of public convenience and necessity for each of the routes named in its petition, which certificates authorize it to engage in air transportation with respect to persons, property, and mail over said routes, and a fifth certificate which authorizes it to engage in air transportation with respect to persons and property but not with respect to mail. Each of these certificates was issued by the Authority on May 22, 1939, with the exception of the certificate for route No. 12, which was issued on August 1, 1939.[1]

Route No. 1 is a transcontinental route extending between the coterminal points Newark, N. J., and New York, N. Y.,[2] and the terminal point Oakland, Calif., via Camden, N. J. (except with respect to mail), Cleveland, Ohio, Chicago, Ill., Omaha, Nebr., Salt Lake City, Utah, San Francisco, Calif., and other intermediate points. Route No. 11 extends along the Pacific coast between the terminal points Seattle, Wash., and San Diego, Calif., via Portland, Oreg., San Francisco, Calif., Los Angeles, Calif., and other intermediate points. Route No. 12 is a "spur" route extending from the two terminal points Seattle and Spokane, Wash., via Pendleton, Oreg., Boise, Idaho, and other intermediate points, to the terminal point Salt Lake, Utah. Route No. 17, a connecting route between two portions of petitioner's route No. 1, extends between the terminal points Denver, Colo., and Cheyenne, Wyo. Petitioner's route with respect to which it is authorized to engage in the air transportation of passengers and property, except mail, extends between the terminal points Seattle, Wash., and Vancouver, British Columbia, Canada.

[1] United Air Lines Transport Corporation, certificate of public convenience and necessity, docket No. 16-401-E-1.

[2] Amendments to certificate of public convenience and necessity, dockets No. 278, 282, 284, 302.

Petitioner's present base rates of compensation for the transportation of mail as fixed by order of the Interstate Commerce Commission dated March 11, 1935, are 31 cents, 27 cents, 33⅓ cents, and 29 cents per pay mail mile for routes No. 1, 11, 12, and 17, respectively, for the transportation of a load of 300 pounds or less. As a result of extra compensation received for the transportation of mail loads in excess of 300 pounds, the base rate for route No. 1 has yielded petitioner for over 2 years an average rate of 40 cents, the maximum compensation allowed under the Air Mail Act of 1934, and the base rate for route No. 11 yielded an average rate of 27.62 cents for the year ended June 30, 1939. No compensation in excess of that provided by the respective base rates has been received by petitioner on routes No. 12 and 17.

Petitioner requests that the rates to be fixed herein should be computed on a pound-mile rather than on a mileage basis. Applying the requested rates to the pound-miles flown during the year 1938, such rates, as translated to a mileage basis, amount to 43.21, 41.75, 34.10, and 75.91 cents per mile flown with mail on routes No. 1, 11, 12, and 17, respectively.

On December 28, 1934, petitioner began mail operations over routes No. 1, 11, and 12, which routes had been operated from May 8, 1934, to that date by United Air Lines, Inc., a wholly owned subsidiary of United Aircraft and Transport Corporation. Prior to May 8, 1934, operations over these routes had been conducted by Boeing Air Transport, Inc., National Air Transport, Inc., and Pacific Air Transport, predecessor companies of United Air Lines, Inc. Service was inaugurated by petitioner on route No. 17 on July 1, 1937, after purchase by it of that route from Wyoming Air Service, Inc.

The contracts under which petitioner transported mail over routes No. 1, 11, and 17 were canceled May 22, 1939, and the contract for route No. 12 was canceled August 1, 1939, pursuant to section 405 (a) of the act, by the issuance to petitioner of certificates of convenience

and necessity authorizing it to transport mail over these routes. However, in accordance with section 405 (a), the compensation continues at the rates set by the Interstate Commerce Commission for the respective routes.

A substantial amount of weight credit and exclusive passenger mileage has been operated by petitioner on its mail routes. As we pointed out in Pennsylvania-Central Airlines Corporation, mail rate proceeding, [3] the Civil Aeronautics Act of 1938 departs from preexisting legislative policy by providing no ground for distinction between the various types of schedules on which mail is carried, and thus deprives the weight-credit schedule of any statutory basis. Therefore, in determining, pursuant to section 406 of the act, the total mileage which is required to be operated by petitioner, not only in the interests of the Postal Service, but also in the interests of commerce and of the national defense, it becomes necessary to consider the total number of schedules operated by petitioner in the light of the requirements of commerce and of the national defense.

In determining the mail rates herein, allowance is made not only for the expenses and revenues incident to the operation of schedules required solely in the interests of the Postal Service but also for the expenses and revenues incident to the operation of all additional schedules found to be required in the interests of commerce or the national defense, or both. The Post Office Department would, therefore, incur no additional cost in the form of mail compensation if all such schedules were henceforth to be designated for the carriage of mail. With respect to such schedules, a letter from the First Assistant Postmaster General, dated January 25, 1940, and made a part of the record herein by stipulation, states that, in the desire to give the public the maximum mail schedule frequency and because no additional cost will be thereby incurred, the Post Office Department has determined that it will designate for the carriage of mail, not only the then existing pay-mail schedules, but also such of petitioner's schedules now operated in weight credit and exclusive passenger status as may be determined [4] by the Authority to be required in the interests of commerce, the national defense, or both.

In determining the question of the number of schedules so required, it is essential for an intelligent appraisal to divide petitioner's routes into sectors according to traffic characteristics, and to consider all relevant traffic data in relation thereto. The latest month with respect to which the record contains complete traffic data is August 1939, and accordingly the various schedules operated by petitioner are hereinafter discussed in the light of the results for that month. It is nevertheless recognized, and due consideration has been given to the fact, that in the past petitioner has experienced substantial seasonal fluctuations of a regular pattern in both revenue traffic carried and revenue airplane miles flown, the latter of which has been accounted for by seasonal increases and reductions in schedules as well

[3] Docket No. 18-406-A-1.

[4] The schedules hereinafter found to be required in the interests of commerce include the pay mail schedules heretofore operated in the various sectors with respect to which such findings are made

as by a lower schedule performance during the winter months. Thus, during the 5-year period ended June 30, 1939, peak traffic and airplane mileage has normally been experienced on petitioner's system in the month of August, while seasonal lows in traffic and airplane mileage have generally been experienced in January and February, respectively. Consideration has also been given herein to the fact that the year-to-year increase in traffic, normally experienced by the industry in general, has been particularly marked during the fall of 1939 and the winter of 1940.

The following is a description of the schedules operated by petitioner during August 1939 on its transcontinental route between Newark-New York and San Francisco, via Chicago, Salt Lake City, and other intermediate stops, designated as route No. 1:

Nine daily round-trip schedules were operated between Newark and Chicago, 3 of which were pay mail and 6 of which were weight credit. Four of the total of 9 round-trip schedules which were operated originated and terminated, on the east-bound and west-bound flights, respectively, at Chicago; and 5 of such round-trip schedules extended westward from Chicago as parts of through schedules. The substantial commercial use made of the Newark-Chicago schedules is shown by the fact that during the month of August 1939, petitioner carried an average of 100.7 west-bound revenue passengers per day between Newark and Chicago, and of 101.2 east-bound revenue passengers per day between Chicago and Newark.[5] These loads represent an average of 11.2 persons per scheduled west-bound flight and of 11.2 persons per scheduled east-bound flight.[6] Douglas DC–3, 21-passenger, and Douglas DST; sleeper equipment was used exclusively on these schedules. The passenger revenues realized from the operation of these schedules during this period averaged 57.85 and 58.13 cents per scheduled revenue mile on west-bound and east-bound flights, respectively.[7] In view of the amount of traffic carried between Newark and Chicago, and the substantial passenger revenues realized therefrom, we find that the operation by petitioner of a total of 9 round-trip schedules between Newark-New York and Chicago is required in the interests of commerce on a daily frequency and on an annual basis.

One daily round trip weight credit schedule was operated locally between Newark and Cleveland. Utilizing Douglas DC–3 equipment on this schedule, petitioner carried average passenger loads of 9.2 and 14.9 persons per scheduled west-bound and east-bound flight,

[5] Figures set forth herein as showing the average daily number of passengers carried between two points include all passengers, both through and local, carried on the schedules in question.

[6] All average revenue passenger loads set forth herein represent the average daily passengers per scheduled flight, and do not take into account the operation of a considerable number of second sections flown or certain scheduled flight cancellations. Thus, such load figures do not necessarily represent average loads per flight.

[7] The average passenger revenues set forth herein were computed by extending the average passenger loads at the revenue yields per revenue passenger mile (including excess baggage) realized on the particular route during August 1939.

respectively, in August 1939. West-bound, this schedule averaged a mail load of 9 pounds, an express load of 5 pounds, and yielded non-mail revenue of 47.70 cents per revenue mile. East-bound, it averaged a mail load of 25 pounds, an express load of 23 pounds, and

yielded nonmail revenues of 70.43 cents per revenue-mile. In view of the substantial use made by commerce of the schedule in question, we find that the operation by petitioner of a round-trip schedule between Newark-New York and Cleveland is required in the interests of commerce on a daily frequency and on an annual basis in addition to the nine schedules found to be required between Newark-New York and Chicago.

One daily exclusive passenger schedule was operated west-bound from Newark to Cleveland via Camden; and another, from Camden to Allentown; and, east-bound, one daily exclusive passenger schedule was operated from Allentown to Newark via Camden, and another, from Cleveland to Camden. Each of these schedules was flown with Boeing 247–D, 10-passenger equipment. In August 1939, the average passenger loads per scheduled flight carried on these schedules ranged from 1.6 to 4.4 persons; and the average express load, from 10 to 30 pounds. The nonmail revenue derived from the operation of these schedules ranged from 8.55 to 23.58 cents per revenue mile. In view of the small commercial revenues realized from the operation of the above exclusive passenger schedules we find that no operation by petitioner by way of Camden is to be considered for the purposes of this proceeding as required in the interests of commerce.

Five daily round trip schedules were operated between Chicago and Salt Lake City, 3 of which were pay mail on 7 days a week, the fourth of which was pay mail on 5 days a week, and the remainder of the operation was weight credit. Effective October 1, 1939, however, the fourth schedule was placed upon a daily pay mail basis. In addition to the 5 schedules extending westward from Chicago as far as, or farther than, Salt Lake City, petitioner operated a daily round trip weight credit schedule between Chicago and North Platte. Of these 6 round trip schedules flown west of Chicago, 1 originated and terminated each day at North Platte, and 2 originated and terminated each day at Salt Lake City. The 3 daily round trip schedules extending beyond Salt Lake City to San Francisco and Oakland were on a daily pay mail basis. During August 1939, petitioner carried an average of 56.2 revenue passengers per day along the route from Chicago to Salt Lake City, and of 61.6 revenue passengers per day along the route from Salt Lake City to Chicago.[8] These loads repre-

[8] These figures do not include passengers carried on the weight credit schedule between Chicago and North Platte.

sent an average of 11.2 and 12.3 persons per scheduled west-bound and east-bound flight, respectively. Douglas DC–3 and DST airplanes were used on these schedules except for that part of 1 round trip schedule extending between Chicago and North Platte upon which Boeing 247–D equipment was used. The passenger revenues realized from the operation of the Chicago-Salt Lake City flights averaged 58.11 and 63.69 cents per scheduled revenue-mile on west-bound and east-bound flights, respectively. On the round trip weight credit schedule between Chicago and North Platte, petitioner carried an average passenger load of 10.7 and 12.4 persons per scheduled west-bound and east-bound flight, respectively, and realized passenger revenues of 55.32 and 64.11 cents per scheduled revenue-mile. Doug-

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las DST equipment was flown on this schedule. In view of the substantial use made by commerce of the schedules operated in the Chicago-Salt Lake City sector, and the passenger revenues realized from the operation thereof, we find that the operation by petitioner of a total of 5 round trip schedules between Chicago and Salt Lake City, and of 1 additional round trip schedule between Chicago and North Platte, is required in the interests of commerce on a daily frequency and on an annual basis.

One daily round trip weight credit schedule was operated locally between Des Moines and Omaha, and one round trip weight credit schedule was operated locally between Chicago and Des Moines on Wednesdays, Thursday, and Fridays. The Chicago-Des Moines schedule was discontinued by petitioner in January 1940. For August 1939, the passenger loads carried on the Des Moines-Omaha schedule averaged only 1.9 and 1.4 persons per scheduled west-bound and east-bound flight, respectively. West-bound, this schedule yielded nonmail revenues of only 9.82 cents per revenue mile, while east-bound, an even smaller yield was realized. In view of the small loads carried thereon and the revenues derived from the operation thereof, we find that for the purposes of this proceeding, the operation by petitioner of the daily weight credit schedule in question, between Des Moines and Omaha, is not required in the interests of commerce.

The following is a description of the schedules operated during August 1939 by petitioner on its Pacific coast route from Seattle to San Diego, designated as route No. 11:

Three daily round-trip schedules were operated between Seattle and Oakland via Portland, 2 of which were pay mail and 1 of which was weight credit and extended directly from Medford to Oakland rather than by way of Sacramento.[9] All of these schedules comprised parts of through schedules, and were operated exclusively with Douglas DC–3, 21-passenger equipment. The necessity of operating three schedules to provide for the traffic between Seattle and Oakland is

[9] One of the south-bound pay-mail schedules stopped at San Francisco instead of Oakland.

shown by the fact that in August 1939 petitioner carried an average of 45.6 south-bound revenue passengers per day between Seattle and Oakland and of 40.8 north-bound revenue passengers per day between Oakland and Seattle. These loads represent an average of 15.2 and 13.6 persons per scheduled south-bound and north-bound flight, respectively, and yielded average passenger revenues of 77.98 and 69.77 cents per scheduled revenue-mile. South-bound, the 2 pay-mail schedules left Seattle at 8:45 a. m. and 9 p. m., respectively; and the weight-credit schedule, at 3:30 p. m. North-bound, the pay-mail schedules arrived in Seattle at 7:11 a. m. and 4:04 p. m., respectively; and the weight-credit schedule at 11:55 p. m. In view of the heavy passenger traffic between Seattle and Oakland and the desirable schedule frequency provided by the 3 schedules in question, we find that the operation by petitioner of a total of 3 round-trip schedules between Seattle and Oakland is required in the interests of commerce on a daily frequency and on an annual basis.

One daily round trip exclusive passenger schedule, with an optional weight-credit status, was operated locally between Seattle and Portland. This schedule was flown with Boeing 247–D airplanes. In

August 1939, average passenger loads of 3.8 persons per scheduled flight were carried south-bound; and of 7.2 north-bound. South-bound, the schedule yielded nonmail revenues of 19.66 cents per revenue-mile; and north-bound, 36.94 cents per revenue-mile. In addition to the schedule in question, petitioner maintained three daily round-trip schedules between Seattle and Portland as a part of the operations on route No. 11, and one daily round-trip schedule between those points in connection with operations on route No. 12. In view of the use made by commerce of the exclusive passenger schedule in question, and the nonmail revenues realized from the operation thereof, we find that the operation of one round-trip schedule between Seattle and Portland is required in the interests of commerce on a daily frequency and on an annual basis in addition to the three schedules hereinbefore found to be required between Seattle and Oakland via Portland and in addition to the one pay-mail schedule operated between Seattle and Portland on route No. 12.

Eight round trip schedules were operated between Oakland and Los Angeles, 3 of which were daily pay mail, 4 of which were daily weight credit, and the eighth of which was exclusive passenger south-bound and weight credit north-bound and was operated daily except Sundays and holidays. The greatest volume of petitioner's Pacific coast traffic is carried in the Oakland-Los Angeles sector. During August 1939, petitioner carried an average of 109.7 south-bound revenue passengers per day between Oakland and Los Angeles, and of 114.5 north-bound revenue passengers per day between Los Angeles and Oakland. These loads represent an average of 13.9 and of 14.5

persons per scheduled south-bound and north-bound flight, respectively, and yielded average passenger revenues of 71.51 and 74.64 cents per scheduled revenue-mile, Seven of the round trip schedules between Oakland and Los Angeles were operated with Douglas DC–3 equipment, and 1 with Boeing 247–D, 10-passenger equipment. Each of the 5 nonpay mail schedules was a nonstop flight between Oakland-San Francisco and Los Angeles, except 1 north-bound weight credit schedule which included a stop at Fresno. On the other hand, each of the pay mail schedules made intermediate stops at points between San Francisco and Los Angeles. The importance to commerce of such nonstop schedules is shown by the fact that in August 1939, average passenger loads of 17.0 and 17.5 persons per scheduled flight were carried thereon south-bound and north-bound, respectively. In view of the substantial passenger loads carried between Oakland and Los Angeles, and the passenger revenues realized therefrom, we find that the operation by petitioner of a total of 8 round-trip schedules between Oakland and Los Angeles is required in the interests of commerce on a daily frequency and on an annual basis.

Two daily round trip schedules were operated between Los Angeles and San Diego, one of which was pay mail, the other of which was weight credit, and both of which were operated with 10-passenger Boeing 247–D airplanes. During August 1939, petitioner carried an average of 6.0 revenue passengers per day from Los Angeles to San Diego and of 6.3 revenue passengers per day from San Diego to Los Angeles. These loads represent an average of 3.0 persons per scheduled south-bound flight and of 3.1 persons per scheduled north-bound

flight. The passenger revenues realized from the operation of these schedules during this period averaged 15.39 cents per revenue-mile on south-bound flights and 16.16 cents per revenue-mile on north-bound flights. The passenger loads carried on the wieght credit schedule averaged only 3.8 persons per scheduled south-bound flight, and 2.2 persons per scheduled north-bound flight. In view of the small loads carried between Los Angeles and San Diego during a month in which the revenue cargo loads for the system have in the past represented a peak, we find, for the purpose of this procceding, that the operation by petitioner of any schedule between Los Angeles and San Diego, in addition to those required by the Post Office Department, is not required in the interests of commerce.

One round trip weight credit schedule was operated between Sacramento and Oakland daily except Sundays and holidays. In addition to this schedule, the west-bound traffic flowing between Sacramento and Oakland-San Francisco was served by two pay mail flights on route No. 1 and by one pay mail flight on route No. 11; while east-bound traffic was served by two pay mail flights on route No. 1 and by two pay mail flights on route No. 11. The weight credit schedule,

flown with Boeing 247–D equipment, originated and terminated, on the west-bound and east-bound flights, respectively, at Sacramento, while the other flights between the points in question were made as parts of through schedules. The passenger loads carried in August 1939 on the weight credit schedule averaged 2.1 and 1.6 persons per scheduled west-bound and east-bound flight, respectively, and yielded passenger revenues of only 10.77 and 8.21 cents per revenue-mile. In view of this fact, and of the service supplied by other schedules operated on routes Nos. 1 and 11, we find, for the purposes of this proceeding, that the maintenance by petitioner of the round trip schedule in question, heretofore operated in weight credit status between Sacramento and Oakland, is not required in the interests of commerce.

One daily round trip weight credit schedule was operated locally between Oakland and San Francisco. This schedule was flown with Douglas DC–3 equipment. The passenger loads carried thereon in August 1939 from Oakland to San Francisco averaged 2.3 persons per scheduled flight; and from San Francisco to Oakland, 1.5 persons. In view of the small passenger loads carried, and the fact that 10 other daily round trip schedules were operated between San Francisco and Oakland as parts of through flights on routes Nos. 1 and 11, we find, for the purposes of this proceeding, that the operation by petitioner of the local schedule in question, between San Francisco and Oakland, is not required in the interests of commerce.

On route No. 12 during August 1939, petitioner operated one daily round trip pay mail schedule between Seattle and Salt Lake City; a second, between Portland and Salt Lake City; and a third, between Pendleton and Spokane. In addition, a daily round trip weight credit schedule was operated between Portland and Pendleton, which, in conjunction with the pay mail schedules, provided a third daily round trip schedule between those points and afforded a connecting service between Spokane and San Francisco and other points on route No. 11. The weight credit schedule was operated with Boeing 247–D

equipment. In August 1939, petitioner carried an average passenger load of 4.1 persons per scheduled east-bound weight credit flight, and of 4.7 persons per scheduled west-bound weight credit flight. East-bound, the weight credit schedule averaged a mail load of 17.2 pounds, an express load of 4.5 pounds, and yielded a nonmail revenue of 19.26 cents per revenue-mile. West-bound, it averaged a mail load of 25 pounds, an express load of 2.6 pounds, and yielded a nonmail revenue of 22.03 cents per revenue-mile. In view of the use made by commerce of the weight credit schedule in question, and the nonmail revenues realized from the operation thereof, we find that the operation by petitioner of one round trip schedule between Portland and Pendleton is required in the interests of commerce on a daily fre-

quency and on an annual basis in addition to the two through schedules operated via those points on a pay-mail basis as of August 1, 1939.

On route No. 17 during August 1939 petitioner operated 2 daily round-trip pay mail schedules between Cheyenne and Denver, and a third pay mail schedule, daily except Sundays and holidays, between those points. Each of these schedules was operated with Boeing 247–D, 10-passenger airplanes, and connect with schedules operated on route No. 1. The average passenger loads carried in August 1939, per scheduled south-bound flight were 1.3, 5.5, and 2.8 persons, respectively; and those carried per scheduled north-bound flight were 2.3, 1.7, and 4.3 persons, respectively. The nonmail revenue yield was 8.38, 27.45, and 14.12 cents per revenue-mile on the respective south-bound schedules, and 11.63, 8.73, and 21.43 on the respective north-bound flights. The average mail load carried per scheduled flight amounted to 59 pounds. The Post Office Department has declared the postal importance of the schedules operated on route No. 17 by heretofore designating them for the carriage of mail, but, in view of the fact that the above revenue figures represent nonmail revenues earned during a month in which the loads carried generally approach a peak, it appears that the operations on route No. 17, with the exception of one schedule, have not in the past been commercially important, and that in the interests of efficient management, they should be placed, if possible, upon a more profitable basis in the future.

On its nonmail route between Seattle and Vancouver during August 1939, petitioner operated 1 daily round-trip exclusive passenger schedule; utilizing Douglas DC–3, 21-passenger equipment. The average passenger loads carried in August 1939 were 5.3 and 4.7 persons per scheduled south-bound and north-bound flight, respectively. Express loads averaged 1 and 47 pounds per scheduled south-bound and north-bound flight, respectively, and the total revenues realized averaged 27.85 and 26.01 cents per revenue-mile. Such load and revenue figures indicate the existence of some commercial need for air transportation between Seattle and Vancouver, but do not appear to justify the operation of 21-passenger airplanes. In view of the fact that the Seattle-Vancouver operation represents a long-established route between the United States and Canada, we feel, that, over a period of time, there may be a commercial significance attributable thereto which would not attach to an otherwise similar domestic operation. Giving consideration to this fact, and also to the possi-

bility that the abandonment and reestablishment of an international route could not be effected with such facility as might exist with respect to a domestic route, consideration is given to petitioner's Seattle-Vancouver operation in fixing the mail rates herein.

In determining the mail compensation to be paid to petitioner, allowance is made for the revenues and expenses incident to the

operation of all of the schedules hereinabove found to be in the interests of commerce, as well as of those schedules which were designated by the Postmaster General as specifically required for the Postal Service. Pursuant to the determination of the Post Office Department, as stated in its letter of January 25, 1940, hereinbefore mentioned, all such schedules will henceforth be designated for the carriage of mail by the Postmaster General. With respect to the appraisal hereinbefore made of the volume of service required by the various sectors of petitioner's routes, we point out that our findings do not imply any denial of petitioner's right to conduct such operations, in addition to those for which allowance is made herein, as may in its opinion seem justified, or to discontinue, after securing the approval of the Postmaster General, such schedules, hereafter to be designated for the carriage of mail, as may prove unwarranted in its view, subject, however, to the obligation to continue to render adequate service to all points named in its certificates.

The various schedules for the operation of which allowance is made herein and which are hereinafter referred to as "approved schedules," represent approximately 12,554,883; 3,809,405; 1,362,025; and 201,376 scheduled route miles per year for routes Nos. 1, 11, 12, and 17, respectively. On the basis of petitioner's percentages of schedule performance for its various routes during the calendar year 1938, which appear to be a reasonable basis for an estimate of future schedule completion, it is anticipated that approximately 12,073,443; 3,673,402; 1,329,337; and 193,522 of the miles represented by the approved schedules will be operated per year on routes Nos. 1, 11, 12, and 17, respectively. The aggregate mileage thus anticipated for petitioner's approved schedules is 17,269,704 miles.

In addition to the scheduled miles represented by the approved schedules and which, on the basis of the above estimate, will be operated annually, it appears that on the schedules in effect on May 1, 1940, petitioner will annually operate approximately 5,730,296 scheduled miles represented by other than approved schedules. Petitioner has also in the past operated varying amounts of second section mileage, principally in connection with approved schedules, but it appears that sufficient revenues have been realized in the operation of such second section mileage to meet the additional costs incurred thereby. Accordingly, allowance for any second section mileage which may be operated in the future is not made in fixing the rates herein, nor do the estimates hereinafter made of the future revenues and expenses for petitioner's system take into account the revenues and expenses which may be realized and incurred in the possible operation of second section mileage.

In the years ended March 31, 1939 and 1940, petitioner carried average revenue passenger loads on its system of 7.12 and 8.64 per-

sons, respectively, at an average fare of 5.06 cents per revenue-passenger-mile. The passenger load of 8.64 persons represents an increase of 21.35 percent over that realized during the year ended March 31, 1939. The above loads yielded passenger revenues of $5,720,491.02 and $8,143,611.08 for the years ended March 31, 1939 and 1940, respectively, the latter amount representing an increase of 42.36 percent over the amount realized in the previous year. On the basis of the revenue passenger loads which petitioner has carried on its various routes in the above 2-year period, and giving consideration to the fares established thereon, it seems reasonable to anticipate that petitioner will realize system passenger revenues of approximately $10,480,000 per year, which amount represents an increase of approximately 28 percent over that realized in the year ended March 31, 1940. This amount of estimated passenger revenue represents an estimated average revenue passenger load of 9.0 persons to be carried at an average fare of 5.06 cents per revenue-passenger mile, or a passenger revenue yield of 45.56 cents per revenue-mile. These estimates, however, include the loads to be carried, not only on the approved schedules which petitioner will operate, but also on the schedules other than the approved schedules which have in the past averaged a passenger revenue yield substantially below that of the system. Accordingly, it is anticipated that petitioner will realize passenger revenues of 46.4, 53.0, 28.3, and 11.4 cents per revenue-mile in the operation of the approved schedules on routes Nos. 1, 11, 12, and 17, respectively. For the year ended September 30, 1939, the passenger yields per revenue-mile realized in the operation of all schedules on these routes were 42.5, 48.5, 24.9, and 9.8 cents, respectively.

For the years ended March 31, 1939 and 1940, petitioner realized system express revenues of $429,070.89 and $518,006.35, respectively, the latter amount representing an increase of 20.73 percent over the amount realized in the previous year. It appears reasonable to estimate that petitioner will in the future realize system express revenues of approximately $570,000 per year, or an increase of approximately 10 percent over those realized in the year ended March 31, 1940. This estimated amount of express revenue represents a yield of 2.48 cents per revenue-mile as compared to 2.78 cents per revenue-mile realized in the year ended March 31, 1940. The decrease in the yield per revenue-mile so anticipated is due to the fact that the estimated increase in the amount of express revenues to be realized is slightly less than proportionate to the increase anticipated with respect to the revenue miles to be flown. The express revenues estimated herein for the future are distributed to the various routes and to the approved and other schedules in ratios corresponding to the express revenues realized therefrom in the year ended March 31, 1940.

For the year ended March 31, 1940, petitioner realized system excess baggage revenues of $75,287.95, as compared with $59,924.28 realized from this source in the year ended March 31, 1939. It appears reasonable to anticipate that petitioner will in the future realize system excess baggage revenues of approximately $97,000 per year, which amount represents an increase of approximately 28 per-

cent over the amount realized in the year ended March 31, 1940. This percentage of increase is the same as that estimated herein with respect to the passenger revenues to be realized in the future. In addition to excess baggage revenues, petitioner realized other miscellaneous and incidental revenues in the year ended March 31, 1940, of $131,274.00 exclusive of the net income derived from the operation of the Boeing School of Aeronautics. No basis appears in the record for anticipating any increase in such revenues, and accordingly it is estimated that petitioner will realize miscellaneous and incidental revenues, excluding excess baggage revenues, of approximately $131,274 per year for the system. Such estimated miscellaneous and incidental revenues are allocated herein to the various routes and to the approved and other schedules in proportion to those earned thereon for the year ended March 31, 1940. The estimated excess baggage revenues are distributed to the various routes and to the approved and other schedules on the basis of the ratios existing between excess baggage and passenger revenues for the year ended March 31, 1940.

On the basis of the above findings of fact and the entire record in this proceeding, we find that the annual nonmail revenues which petitioner may be expected to realize in the operation of its approved schedules are approximately as follows:

Nonmail revenues	Route No. 1	Route No. 11	Route No. 12	Route No. 17
Passenger	$5,607,000	$1,946,000	$377,000	$22,000
Express	396,800	55,800	12,000	900
Miscellaneous and incidental	159,700	32,400	10,100	2,000
Total	6,184,400	2,037,200	399,700	24,900

Petitioner, in presenting its evidence with respect to the expenses to be incurred in the operation of its system, classified the various items of expense as (1) those assumed to vary directly with passenger-miles, (2) those assumed to vary directly with airplane-miles, and (3) those assumed to remain fixed. However, the various expenses are herein discussed in relation to the classifications specified by the Authority in its uniform system of accounts. Petitioner's past reported direct flying expenses for the periods indicated are shown by the following table:

	12 months ended—		
	Mar. 31, 1939	Sept. 30, 1939	Mar. 31, 1940
Direct flying expense:			
Operations	$3,722,223.39	$3,929,868.82	$4,297,187.77
Maintenance	1,035,927.90	872,900.24	897,512.57
Depreciation [1]	1,046,435.33	1,216,165.60	1,109,287.91

[1] The direct flying depreciation expense here set forth for the years ended Mar. 31 and Sept. 30, 1939, is as originally reported by petitioner. During the month of February 1940, petitioner reported certain depreciation adjustments retroactive to July 1, 1939, which are reflected in the figure here set forth for the year ended Mar. 31, 1940.

Petitioner's direct flying operations expense of $4,297,187.77, shown in the above table for the year ended March 31, 1940, represents a cost of 23.09 cents per revenue-mile. However, the per-mile cost for the expenses within this classification amounted to 23.47 cents per revenue-mile in the year ended March 31, 1939. Petitioner's operating experi-

ence during the 2 years ended March 31, 1940, appears to afford a reasonable basis for estimating future results, and accordingly we find that petitioner will incur direct flying operations expense of approximately 23.3 cents per revenue mile, or of $5,359,000 per year for its system.

Petitioner's direct flying maintenance expense reported for the year ended March 31, 1939, in the amount of $1,035,927.90 represents a cost of 6.54 cents per revenue-mile. However, in this period petitioner experienced certain maintenance expenses in connection with its engines, the recurrence of which cannot, on the basis of the record herein, be anticipated for the purposes of this proceeding. In the year ended March 31, 1940, petitioner's direct flying maintenance expense decreased to a cost of 4.82 cents per revenue-mile. Giving consideration to the results reported for the 2 years ended March 31, 1940, we find that petitioner will incur direct flying maintenance expense of approximately 5.0 cents per revenue-mile or of $1,150,000 per year for its system.

The direct flying depreciation expense reported by petitioner for the year ended March 31, 1940, reflects certain adjustments made by petitioner with respect to aircraft and engine depreciation expense, which adjustments were retroactive to July 1, 1939. However, the nature of such adjustments and the basis upon which such depreciation expense, reported for the year ended March 31, 1940, was computed by petitioner are not indicated in the record. The direct

flying depreciation expense reported for the year ended September 30, 1939, in the amount of $1,216,165.60, includes $833,800.71 for aircraft depreciation, which amount was computed on the basis of an estimated service life of 4 years with a residual value of $5,000 for each type of aircraft operated. In September 1939, petitioner owned 17 Boeing 247–D aircraft, 13 of which are used in its transport operations, and all of which were fully depreciated as of October 1, 1938. Inasmuch as these aircraft are still being used by petitioner, and apparently will be used for some time in the future, a 7-year service life period, with a residual value of $5,000, would seem to constitute an appropriate basis for depreciating petitioner's Boeing 247–D aircraft. On September 30, 1939, petitioner also owned 35 Douglas Aircraft consisting of 26 Douglas DC–3's and 9 Douglas DST's. On the basis of petitioner's operating experience and the experience of the industry in general, an estimated 5-year service life, with a 20-percent residual value, appears to be a reasonable basis for computing the allowance made herein for depreciation expense with respect to petitioner's Douglas aircraft.

The direct flying depreciation expense reported by petitioner for the year ended September 30, 1939, also included $371,509.07 for engine depreciation. Petitioner uses Pratt & Whitney Wasp S1H1G engines in its Boeing 247–D aircraft and Pratt & Whitney Twin Wasp SB3G, S1CG, and S1C3G engines in its Douglas aircraft. The S1H1G engines were depreciated on the basis of a 5,000-hour service life with no residual value. Petitioner's experience shows that a service life of 5,000 hours for the S1H1G engines will normally be exceeded, and in view of the experience of the industry with this type of engine, an estimated service life of 6,000 hours appears to be a

reasonable basis for computing the allowance made herein for depreciation expense with respect to the S1H1G engines. It does not appear that a service life greater than 6,000 hours for petitioner's engines of this type can reasonably be anticipated in view of the probability that their retirement from service will be forced by the retirement of the airplanes in which they are installed. Petitioner's SB3G engines, on the basis of normal use, should be presently depreciated to their established residual value of $500. They had been assigned a service life of 4,000 hours which, in view of certain mechanical difficulties that developed in such engines, appears to have been a reasonable basis for computing the depreciation thereof. The S1CG and S1C3G engines were depreciated on the basis of a 4,000-hour service life with a $500 residual value. However, in view of all the experience accumulated with respect to these types of engines, an estimated service life of 6,000 hours with a residual value of $500 appears, for the purpose of fixing the mail rates herein, to constitute a reasonable basis for depreciating petitioner's S1CG and S1C3G engines.

On the basis of the above adjustments with respect to aircraft and engine depreciation, petitioner's reported direct flying depreciation expense for the year ended March 31, 1940, in the amount of $1,109,287.91, is reduced to approximately $1,099,000, representing 5.91 cents per revenue-mile. Since September 30, 1939, however, petitioner has sold two of its Boeing 247–D aircraft and acquired eight new Douglas DC–3's. On the basis of the service lives hereinabove found to constitute a reasonable basis of depreciation for the purposes of this proceeding, and giving consideration to the effect of the above-mentioned sale and acquisition of flying equipment, we find that petitioner will incur direct flying depreciation expense of approximately 5.8 cents per revenue-mile or of $1,335,000 per year for its system.

Petitioner's indirect flying, traffic and advertising, and general and administration expenses reported for the periods indicated are shown by the following table:

	12 months ended—	
	Mar. 31, 1939	Mar. 31, 1940
Indirect flying expense:		
Operations	$2, 162, 733. 56	$2, 370, 645. 33
Cents per revenue-mile	. 1364	. 1274
Maintenance	437, 004. 23	477, 659. 04
Cents per revenue-mile	. 275	. 257
Depreciation	226, 540. 14	250, 453. 93
Cents per revenue-mile	. 143	. 134
Traffic and advertising	1, 196, 222. 86	1, 451, 693. 13
Cents per revenue-mile	. 754	. 780
General and administrative	943, 411. 13	1, 085, 240. 79
Cents per revenue-mile	. 595	. 583

The expenses which fall within the above categories are, in general, those which petitioner assumes will remain fixed despite an increase

in miles operated. However, the increase in the expenses shown in the above table in the year ended March 31, 1940, over those incurred in the year ended March 31, 1939, appears to have been caused primarily by the expansion of operations. The fact that all such expenses, except traffic and advertising, decreased in terms of cost per revenue-mile is accounted for by the fact that their percentage of increase was less than that experienced with respect to the revenue-miles flown. On the basis of the record herein, and giving consideration to the fact that we anticipate an increase in the revenue miles to be flown annually in the future of more than 4 million miles over those flown in the year ended March 31, 1940, we find that in the operation

of its system petitioner will incur indirect flying operations expense, indirect flying maintenance expense, and indirect flying depreciation expense of approximately $2,700,000, $540,000, and $285,000 per year, respectively; and in addition thereto, we further find that petitioner will incur traffic and advertising and general and administration expense of approximately $1,725,000 and $1,225,000 per year, respectively.

In accordance with its method of expense classification, the expenses assumed by petitioner to vary with revenue-passenger-miles flown include passenger liability insurance, the variable portion of passengers' supplies and food service expense, commissions on passenger tickets sold and reservations communications expense. That portion of the total amount of future operating expenses, hereinbefore estimated for the operation of petitioner's system, which is represented by the items within this classification, is herein distributed, in accordance with petitioner's method of allocation, to the various routes and to the approved and other schedules on the basis of passenger revenues estimated herein.

The principal expenses which petitioner assumed would vary with airplane-miles flown are those for engine and aircraft repairs, fuel, salaries, and expenses of flight crews, public-liability and property-damage insurance, and engine depreciation. That portion of the total amount of future operating expenses, hereinabove estimated for the operation of petitioner's system, which is represented by the items within this group, is herein distributed, in accordance with petitioner's method of allocation, to the various routes and to the approved and other schedules on the basis of estimates of airplane-miles to be flown in connection therewith.

The expenses assumed by petitioner to remain fixed include airplane depreciation, the major portion of indirect flying expense, traffic and advertising, and general and administration expense. Petitioner's method of allocating expenses within this classification has the effect of charging what appears to be an unreasonably high proportion thereof to route No. 17, and of charging no aircraft depreciation to its nonmail route or to the operation into Camden, the nonmail point on route No. 1. In distributing that portion of the total amount of future operating expenses, hereinabove estimated for the operation of petitioner's system, which is within the classification of expenses assumed by petitioner to remain fixed, only the additional costs occasioned by the operation of schedules other than the approved sched-

ules are allocated to such other schedules for communications, engineering and shops, division and station expense, and communications and ground-equipment depreciation expense; while the remainder of such expenses are distributed to the approved schedules on the various routes on the basis of the revenue-miles estimated herein. Air-

craft depreciation expense is allocated to the various routes and to the approved and other schedules, separately for each type of equipment in use, on the basis of the estimated total miles to be flown by each of the types of equipment. The remaining expenses which are assumed to remain fixed are allocated only to approved schedules except where the operation of the other schedules results in additional costs which are therefore allocated to the other schedules. Of such remaining expenses, those for traffic and advertising and for general and administration are further distributed to the approved schedules on individual mail routes on the basis of estimated passenger revenues, and all others of the remaining expenses are further distributed to approved schedules on the individual mail routes on the basis of estimated revenue-miles to be flown on the schedules approved herein. On the basis of the foregoing allocation, we find that the average cost of operating the approved schedules will be approximately 66.33 cents per revenue-mile as compared to a cost of 49.98 cents for the other schedules.

Petitioner's financial position as of December 31, 1938, and as of December 31, 1939, are shown by the following summary balance sheets:

ASSETS

	Dec. 31, 1938	Dec. 31, 1939
Current assets [1]	$5, 389, 249. 82	$7, 316, 492. 11
Deferred debits	287, 383. 86	251, 756. 04
Investments:		
In affiliated companies	1, 461, 952. 60	1, 459, 899. 23
Other	264, 714. 75	272, 893. 02
Flying and ground equipment (net)	5, 297, 513. 87	4, 482, 764. 56
Miscellaneous (nontransport) physical property (net)	91, 707. 69	61, 694. 81
Investment (nontransport) in separately operated divisions	113, 842. 37	112, 233. 32
Total assets	12, 906, 364. 96	13, 957, 733. 09

LIABILITIES

Current and accrued liabilities	$1, 169, 857. 97	$1, 910, 936. 21
Deferred credits	85, 555. 43	122, 082. 57
Long-term debit: Affiliated companies	13, 718. 23	16, 621. 12
Total liabilities	1, 269, 131. 63	2, 049, 639. 90
Net worth:		
Common stock outstanding	7, 497, 961. 50	7, 502, 255. 00
Premium on stock	2, 823, 489. 84	2, 823, 487. 87
Paid-in surplus	3, 549, 890. 29	3, 549, 890. 29
Earned surplus	−2, 234, 108. 30	−1, 967, 539. 97
Total net worth	11, 637, 233. 33	11, 908, 093. 19
Total liabilities and net worth	12, 906, 364. 96	13, 957, 733. 09

[1] Includes cash and short-term investments in the amount of $3,856,329.51 and $5,114,109.98 on Dec. 31, 1938, and Dec. 31, 1939, respectively.

Petitioner introduced exhibits analyzing its "working capital" positions as reflected in its balance sheets at the end of the various months from January 31, 1938, to March 31, 1939, inclusive, and estimated that $2,973,095 were required for operating purposes on the basis of 1938 levels and that $750,000 in additional funds were at the time of the hearing required for future construction and equipment purchases, amounting to a total of $3,723,095.

"Working capital," as here defined, represents the sum of "current and accrued assets" and "deferred debits," minus the sum of "current and accrued liabilities" and "deferred credits," as set forth in Monthly Financial Report and Operating Statistics for Air Mail Carriers, Form 2780, filed with the Authority. Actual computations on that basis, using petitioners' balance sheet for the calendar year ended

December 31, 1938, establish its working capital at that date in the amount of $4,421,220.28.

Following is a table prepared from the above shown balance sheets:

	Dec. 31, 1938	Dec. 31, 1939
Current assets	$5, 389, 249. 82	$7, 316, 492. 11
Deferred debits	287, 383. 86	251, 756. 04
Total working assets	5, 676, 633. 68	7, 568, 248. 15
Deduct:		
Current liabilities	1, 169, 857. 97	1, 910, 936. 21
Deferred credits	85, 555. 43	122, 082. 57
Total working liabilities	1, 255, 413. 40	2, 033, 018. 78
Working capital	4, 421, 220. 28	5, 535, 229. 37
Deduct: Cash and short-term securities	3, 856, 329. 31	5, 114, 109. 98
Balances of working capital	564, 890. 97	421, 119. 39

Petitioner's total of cash and short term securities appears to have been greatly in excess of cash in transit and operating bank balance requirements. For the 15-month period covered in petitioner's exhibit 17–A funds allocated to these purposes are shown to have averaged $326,350.86 and to have reached a peak of $593,799.13 in October 1938. No evidence was introduced in support of the operating necessity of this peak figure. However, petitioner set forth the following cash items as a part of its working capital requirements based upon operations for 1938:

Working funds	$53, 017
Bank balances maintained in pay roll and passenger revenue collection accounts	90, 745
Cash in transit not available for use	235, 605
Operating bank balance over and above specific expenditure requirements	750, 000
	1, 129, 367

As hereinbefore noted, petitioner has included in its evidence in support of working capital requirements an item of $750,000 (in addition to the item of $750,000 described as "Operating bank balance over and above specific expenditure requirements") for future construction and equipment purchases. It will be noted from the summary balance sheets shown above that the net value of petitioner's flying and ground equipment at December 31, 1938, and December 31, 1939, was $5,297,513.87 and $4,482,764.56, respectively. It will also be

noted that petitioner's investment in flying and ground equipment plus its working capital constituted substantially its entire capital investment in mail operations. After adjustments made to reflect the bases of depreciation herein found to be reasonable, the net values of petitioner's fixed assets at December 31, 1938, and December 31, 1939, were approximately $5,890,000 and $5,050,000, respectively.

In view of the fact that petitioner's traffic and mileage flown were at substantially higher levels on December 31, 1939, than prevailed at December 31, 1938, it appears obvious that the balance sheet values of such equipment do not precisely reflect the magnitude of petitioner's operations at these two dates. Petitioner's future equipment requirements must, of course, be measured at any given future time by its then traffic volume. However, its investment in equipment at December 31, 1938, and December 31, 1939, appears to be adequately represented by its balance sheet figures of $5,297,513.87 and $4,482,-764.56, respectively, adjusted upward, as above described, to approximately $5,890,000 and $5,050,000, respectively, and its investment during the calendar year ended 1939 appears to have been approximately $5,470,000, or an arithmetic average of the adjusted year-end figures. It appears reasonable, in view of present upward traffic trends, to assume that at some time in the near future petitioner's flying and ground equipment accounts will reflect as great a total value or a greater total value than its adjusted figure of approximately $5,890,000 as of December 31, 1938.

Petitioner's balance sheet reflects the net investment in the Boeing School of Aeronautics which is operated as a separate division. It is urged by petitioner that the net book value of real property and equipment used in operations by the Boeing School should be considered by us in determining the mail rates herein. However, we do not find that the operation of the Boeing School of Aeronautics is reasonably incidental and necessary to the operation of petitioner's approved schedules, notwithstanding the fact that certain of petitioner's trained personnel may be furnished thereby. Accordingly, petitioner's investment in the Boeing School of Aeronautics is not considered, for the purposes of this proceeding, to represent a part of petitioner's facilities which are used and useful in the transportation of mail.

Petitioner also contends that the net book value of the real property and equipment used in operations by United Airports Co. of California, Ltd., should be considered in fixing the rates herein. This corporation, a wholly owned subsidiary of petitioner, is the owner of Union Air Terminal at Burbank, Calif., which petitioner and other air carriers utilize in their air transport operations. Allowance is made herein, as a part of petitioner's future estimated operating expenses, for the amount of rent to be paid by petitioner to the subsidiary for the use of

the airport in question. Since no showing was made that the rent which petitioner pays does not reasonably compensate the subsidiary for the use made by petitioner of the airport, no further consideration is given to this investment.

The past operating results as reported by petitioner are reflected by the following table for the periods indicated:

12 months ended—	Operating revenues	Operating expenses [1]	Operating profit
June 30, 1938	$9,384,065.05	$10,587,361.63	−$1,203,296.58
Sept. 30, 1938	9,205,822.04	10,673,950.47	−1,468,128.43
Dec. 31, 1938	9,609,237.15	10,679,850.17	−1,070,613.02
Mar. 31, 1939	9,912,164.59	10,770,498.54	−858,333.95
June 30, 1939	10,420,544.64	10,874,416.84	−453,872.20
Sept. 30, 1939	11,213,153.09	11,156,741.46	56,411.63

[1] These operating expenses are as originally reported by petitioner, and do not reflect the adjustments hereinbefore made with respect to depreciation of aircraft and engines.

The operating losses shown above were caused in part by the inauguration of operations with additional and larger aircraft. Shortly before January 1, 1937, petitioner purchased its first Douglas DC–3 aircraft, and during the year 1937 an increasing number of Douglas aircraft was used in operations. The use of additional equipment without a proportionate increase in miles flown lowered the average utilization of aircraft. Also the use of the larger Douglas equipment caused a steady increase in seat miles flown during the years 1937 and 1938, while, at the same time, there was no corresponding increase in revenue-passenger-miles. Thus, the cost per revenue-passenger-mile flown increased during the year 1937, and although such cost gradually decreased in 1938, it had not been reduced to the average cost for the year ended December 31, 1936, until the year 1939.

As hereinbefore stated, the petition in this proceeding was filed October 27, 1938. For the year ended October 31, 1939, petitioner reported an operating profit of $201,174.61 for its system and of $265,894.13 for its mail routes. Giving effect to the depreciation adjustments hereinbefore found to be reasonable, petitioner's operating profit for its mail routes was $400,802.77 for the year in question. The amount of operating profit so realized is accounted for primarily by the marked increase in passenger traffic. During the year ended October 31, 1939, petitioner also increased its revenue miles flown by more than 1,400,000 miles over the amount of such miles flown in either the year 1937 or 1938. It appears that, as a result of the increased volume of passenger traffic and increased mileage operated, more efficient utilization of petitioner's flying equipment has been effected. For the year ended February 29, 1940, petitioner reported an operating profit for its mail routes of $711,754.39.[10]

[10] During the month of February 1940, petitioner reported a depreciation adjustment retroactive for the period July 1, 1939, to date. Such adjustment is therefore reflected in the results reported for 8 months of the year ended February 29, 1940.

As hereinbefore stated, such schedules, heretofore operated by petitioner on a weight credit or exclusive passenger basis, as have been found by us to be required in the interests of commerce or the national defense, or both, will be designated for the carriage of mail by the Post Office Department. Because of the substantial amount of nonmail mileage which will thus be converted to mail mileage, the mileage base will be greatly broadened with a corresponding decrease in the rate in cents per mail-mile from the rate which would be necessary to yield the same total amount of mail compensation on the basis of the miles heretofore operated on a pay mail basis. On the other hand, the basis for computing mail compensation which is herein adopted, in accordance with our previous mail rate decisions, is that

of direct airport-to-airport mileages rather than the miles actually to be flown over authorized airways. Since the average route mileage, which it is estimated that petitioner will actually fly in operating the approved schedules, exceeds the direct airport-to-airport mileage by approximately 6.49, 3.91, 3.04, and 1.34 percent on routes Nos. 1, 11, 12, and 17, respectively, the rates fixed herein for the various routes have been adjusted upward in proportion to such percentages.

It has been our practice in all previous rate proceedings to provide for compensation for the carriage of mail in excess of an average of 300 pounds on each airplane at a rate of 2.5 percent of the base rate for each 25 pounds or fraction thereof by which the average amount of mail carried on a particular route during a month of operation exceeded 300 pounds. While that practice has in general appeared reasonable, it becomes obviously inequitable in certain cases. To apply the above formula to a route on which the base rate is 19 cents per mile, for example, would result in compensating for the carriage of amounts of mail above an average of 300 pounds at a rate of only 0.475 cent per mile for each additional 25 pounds or fraction thereof, or at a minimum rate of 0.19 mill per pound-mile for such excess mail. We find, therefore, that an application in the present case of the practice heretofore followed in this particular would fail to compensate the carrier adequately for the carriage of increased amounts of mail; and we further find that an appropriate minimum rate of payment for the carriage of excess mail in the present proceeding is 0.7 cent per mile for each 25 pounds or fraction thereof in excess of an average of 300 pounds on each airplane, the averages being computed on a monthly basis. The minimum thus established will be applied in the present proceeding only with respect to those routes where the application of the 2.5-percent rule as heretofore employed would produce a rate for the carriage of each 25 pounds of excess mail of less than 0.7 cent; which is to say, only where the base rate established is less than 28 cents per mile.

We find, upon consideration of the record in this proceeding and after taking into consideration the elements as provided by the act, particularly section 406 thereof, that the fair and reasonable rates of compensation to be paid to petitioner for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between the points between which petitioner is authorized to transport mail in the certificates of public convenience and necessity which it holds for routes Nos. 1, 11, 12, and 17, respectively, are as follows:

(1) For the period beginning on October 27, 1938, the date of filing of the petition herein, and terminating on June 30, 1940, by substituting for the rate for the monthly mileage prescribed for each of said routes Nos. 1, 11, 12, and 17 by the order of the Interstate Commerce Commission in *Air-Mail Compensation*, dated March 11, 1935, a base rate of 31, 33, 36, and 37 cents for routes Nos. 1, 11, 12, and 17, respectively, such base rates to be applied pursuant to the method for computing compensation provided by said order; and, except as modified by changing the amounts of the base rates of compensation, said order, as amended or modified by any subsequent

order of the Interstate Commerce Commission, shall in all other respects be applied with full force and effect in computing the compensation to which petitioner is entitled for said period on each of said routes.

(2) On and after July 1, 1940, a base rate of 19 cents per airplane mile for route No. 1, and 18 cents per airplane mile for route No. 11, flown on schedules designated or ordered to be established by the Postmaster General for the transportation of mail, pursuant to the provisions of the Civil Aeronautics Act of 1938, between all or any of the points on routes No. 1 and 11, respectively, for the first 300 pounds of mail, or fraction thereof, plus 0.7 cent for each additional 25 pounds of mail, or fraction thereof, computed at the end of each calendar month on the basis of the average mail load carried over the respective routes during such month, such rates to be applied to the direct airport-to-airport mileage between points served for the carriage of mail on each of such schedules flown, to be computed and applied separately with respect to each of said routes, and to be applied without reference to any base mileage.

(3) On and after July 1, 1940, a base rate of 36 cents per airplane mile for route No. 12, and 37 cents per airplane mile for route No. 17, flown on schedules designated or ordered to be established by the Postmaster General for the transportation of mail, pursuant to the provisions of the Civil Aeronautics Act of 1938, between all or any of the points on routes No. 12 and 17, respectively, for the first 300 pounds of mail, or fraction thereof, plus 2.5 percent of the respective base rates for each additional 25 pounds of mail, or fraction thereof,

computed at the end of each calendar month on the basis of the average mail load carried over the respective routes during such month, such rates to be applied to the direct airport-to-airport mileage between points served for the carriage of mail on each of such schedules flown, to be computed and applied separately with respect to each of said routes, and to be applied without reference to any base mileage.

An appropriate order will be entered.

Branch, Mason, and Warner, Members of the Authority, concurred in the above opinion.

Hinckley, Chairman, and Ryan, Member, did not take part in the decision.

ORDER

United Air Lines Transport Corporation, having filed a petition for an order fixing and determining the fair and reasonable rates of compensation for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, over routes No. 1, 11, 12, and 17, pursuant to section 406 of the Civil Aeronautics Act of 1938, and a full hearing thereon having been held before the Authority, and the Authority, upon consideration of the record of such proceedings having issued its opinion containing its findings, conclusions, and decision, which is attached hereto and made a part hereof, and having found that its action in this matter is necessary pursuant to said opinion:

IT IS ORDERED, That the fair and reasonable rates of compensation to be paid to petitioner for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between the points between which petitioner is authorized to transport mail in the certificates of public convenience and necessity which it holds for routes No. 1, 11, 12, and 17, are hereby fixed, determined, and published, as follows:

(1) For the period beginning on October 27, 1938, the date of filing of the

petition herein, and terminating on June 30, 1940, by substituting for the rate for the monthly mileage prescribed for each of said routes No. 1, 11, 12, and 17, by the order of the Interstate Commerce Commission in *Air-Mail Compensation*, dated March 11, 1935, a base rate of 31, 33, 36, and 37 cents for routes No. 1, 11, 12, and 17, respectively, such base rates to be applied pursuant to the method for computing compensation provided by said order; and, except as modified by changing the amounts of the base rates of compensation, said order, as amended or modified by any subsequent order of the Interstate Commerce Commission, shall in all other respects be applied with full force and effect in computing the compensation to which petitioner is entitled for said period on each of said routes.

(2) On and after July 1, 1940, a base rate of 19 cents per airplane-mile for route No. 1 and 18 cents per airplane-mile for route No. 11, flown on schedules designated or ordered to be established by the Postmaster General for the transportation of mail, pursuant to the provisions of the Civil Aeronautics Act of 1938, between all or any of the points on routes Nos. 1 and 11, respectively, for the first 300 pounds of mail, or fraction thereof, plus 0.7 cent for each additional 25 pounds of mail, or fraction thereof, computed at the end of each calendar month on the basis of the average mail load carried over the respective routes during such month, such rates to be applied to the direct airport-to-airport mileage between points served for the carriage of mail on each of such schedules flown, to be computed and applied separately with respect to each of said routes, and to be applied without reference to any base mileage.

(3) On and after July 1, 1940, a base rate of 36 cents per airplane-mile for route No. 12, and 37 cents per airplane-mile for route No. 17, flown on schedules designated or ordered to be established by the Postmaster General for the transportation of mail, pursuant to the provisions of the Civil Aeronautics Act of 1938, between all or any of the points on routes Nos. 12 and 17, respectively, for the first 300 pounds of mail, or fraction thereof, plus 2.5 percent of the respective base rates for each additional 25 pounds of mail, or fraction thereof, computed at the end of each calendar month on the basis of the average mail load carried over the respective routes during such month, such rates to be applied to the direct airport-to-airport mileage between points served for the carriage of mail on each of such schedules flown, to be computed and applied separately with respect to each of said routes, and to be applied without reference to any base mileage.

DOCKET NO. 261 [1]

UNITED AIR LINES TRANSPORT CORPORATION—CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Red Bluff Operation)

In the matter of the application of United Air Lines Transport Corporation for an amendment of its certificate of public convenience and necessity for route No. 11 under section 401 (h) of the act to include Red Bluff, Stockton, Marysville, Chico, Modesto, and Merced, Calif., as intermediate points.

Decided June 28, 1940

Application of United Air Lines Transport Corporation for amendment of its certificate of public convenience and necessity for route No. 11 to include Red Bluff, Calif., as an intermediate point granted. In all other respects the applications of United Air Lines Transport Corporation denied

APPEARANCES:

Frank E. Quindry, Paul M. Godehn, and *Henry Eickhoff, Jr.,* for United Air Lines Transport Corporation.

Hubert A. Schneider for Civil Aeronautics Authority.

OPINION

BY THE AUTHORITY:

United Air Lines Transport Corporation, hereinafter referred to as "United," by applications filed June 20, 1939 (docket No. 261), July 1, 1939 (docket No. 268), July 17, 1939 (dockets No. 275 and 276), and July 20, 1939 (dockets No. 280 and 281), pursuant to section 401 (h) of the Civil Aeronautics Act of 1938, seeks an amendment of its certificate of public convenience and necessity for route No. 11 to include Red Bluff, Stockton, Marysville, Chico, Modesto, and Merced, Calif., as intermediate points, with authorization to transport persons, property, and mail to and from said intermediate points.

[1] This opinion also embraces dockets No. 268, 275, 276, 280, and 281, applications of United Air Lines Transport Corporation. These applications were consolidated for the purpose of hearing.

After due notice to the public and interested parties, a public hearing was held on August 7 and 8, 1939, before Examiner C. Edward Leasure of the Authority, and at the hearing the applications were consolidated into one proceeding.

On March 14, 1940, the examiners' report was duly filed and served, recommending that the Authority find that the public convenience and necessity require an amendment of United's certificate of public convenience and necessity for route No. 11 to include Red Bluff as an intermediate point, and further recommending that the applications with respect to Stockton, Marysville, Chico, Modesto, and Merced be denied.

On April 8, 1940, United duly filed its exceptions to the examiners' report. The exceptions, six in number, attack generally and specifically the recommendation that the applications to include Stockton, Marysville, Chico, Modesto, and Merced as intermediate points be denied. A brief was filed in support of such exceptions and oral argument was held before the Authority on May 9, 1940.

The certificate of public convenience and necessity which is sought to be amended in this proceeding was issued by the Authority on May 22, 1939,[2] authorizing United to engage in air transportation with respect to persons, property and mail between the terminal point Seattle, Wash., the intermediate points Tacoma, Wash., Portland, Oreg., Medford, Oreg., Sacramento, Calif., Oakland, Calif., San Francisco, Calif., Monterey, Calif., Fresno, Calif., Bakersfield, Calif., Santa Barbara, Calif., and Los Angeles, Calif., and the terminal point San Diego, Calif. (designated as route No. 11). United also holds certificates of public convenience and necessity issued by the Authority authorizing it to engage in air transportation between the coterminal points New York, N. Y., and Newark, N. J., and the terminal point Oakland, Calif., via intermediate points (designated as route No. 1); between the terminal point Salt Lake City, Utah, and the terminal points Seattle, Wash., and Spokane, Wash., via intermediate

points (designated as route No. 12); between the terminal points Denver, Colo., and Cheyenne, Wyo. (designated as route No. 17); and between the terminal points Seattle, Wash., and Vancouver, British Columbia, Canada. These certificates authorize the transportation of persons, property, and mail on all routes with the exception of mail to and from the intermediate point Camden, N. J., on route No. 1, and on the route between Seattle and Vancouver.

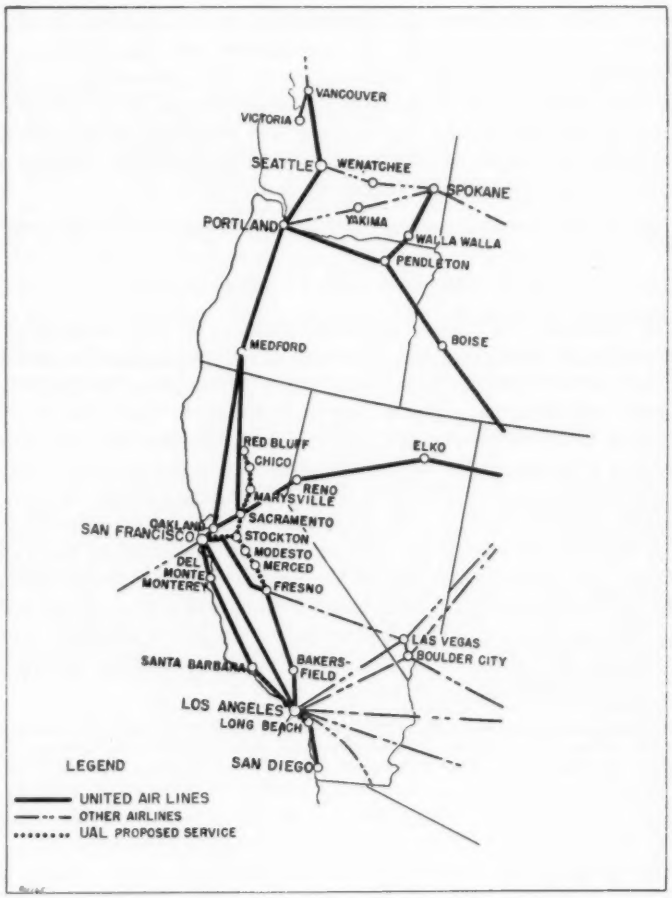
Whether we regard the applications in this proceeding as being within the provisions of subsection (h) or subsection (d) (1) of section 401 of the act, the public convenience and necessity is the standard established for action by the Authority in determining whether the proposed air transportation should be authorized.

[2] United Air Lines Transport Corporation, certificate of public convenience and necessity, docket No. 16-401-E-1.

The Authority in several opinions [3] relative to new route applications and applications for the extension of existing routes has outlined in detail some of the considerations which govern it in the disposition of such applications. These opinions indicate that the primary questions to be considered are, in substance, whether the new service will serve a useful public purpose, responsive to a public need; whether this purpose can and will be served as well by existing lines or carriers; whether it can be served by the applicant with the new service without impairing the operations of existing carriers contrary to the public interest; and whether any cost of the proposed service to the Government will be outweighed by the benefit which will accrue to the public from the new service. Whether inauguration of the proposed operation herein considered is in the public interest must be determined with these considerations in mind.

[3] Northwest Airlines, Inc., Duluth-Twin Cities Operation, dockets No. 131 and 232; Continental Air Lines, Inc., Roswell, Hobbs, Carlsbad Operation, dockets Nos. 265 and 285; National Airlines, Inc., Eastern Air Lines, Inc., Daytona Beach-Jacksonville Operation, dockets Nos. 5-401 (B)-1, 222, 9-401 (B)-1, and 203.

Route No. 11, and the route as proposed to be amended, are shown by the following map.



The air mileages between certain points on United's Route No. 11 and the points involved in this proceeding are shown in the following table:

	Mileages											
	Los Angeles	Fresno	Merced	Modesto	Stockton	San Francisco	Oakland	Sacramento	Marysville	Chico	Red Bluff	Medford
Los Angeles	----	----	----	----	----	----	----	----	----	----	----	----
Fresno	194	----	----	----	----	----	----	----	----	----	----	----
Merced	252	58	----	----	----	----	----	----	----	----	----	----
Modesto	283	89	31	----	----	----	----	----	----	----	----	----
Stockton	308	114	56	25	----	----	----	----	----	----	----	----
San Francisco	375	181	123	92	67	----	----	----	----	----	----	----
Oakland	387	193	135	104	79	12	----	----	----	----	----	----
Sacramento	353	159	101	70	45	112	124	----	----	----	----	----
Marysville	398	204	146	115	90	157	169	45	----	----	----	----
Chico	440	246	188	157	132	199	211	87	42	----	----	----
Red Bluff	473	279	221	190	165	232	244	120	75	33	----	----
Medford	642	448	390	359	334	401	413	289	244	202	169	----

The proposed schedules, requiring 740 net additional miles of flying per day, would be conducted with Boeing 247–D, 10-passenger aircraft, and would include a round trip daily between Red Bluff and Oakland via Chico, Marysville, Sacramento, Stockton, and San Francisco and a round trip daily between Fresno and Oakland via Merced, Modesto, Stockton, and San Francisco. These schedules would connect at Stockton, thus providing service to and from points north and south of that city. A north-bound connection would be provided at Red Bluff on an existing Los Angeles-Seattle trip and other connections would be made at Fresno to provide service to and from Bakersfield and Los Angeles, and at Sacramento and San Francisco to provide service to and from eastern points on United's route No. 1. The San Francisco Bay area would also receive increased service.

The following tabulation shows the population of the communities proposed to be served as shown by the census for the year 1930, the estimated population for the year 1939, and the postal receipts and bank clearings for the year 1938:

City	Population		Postal receipts, 1938	Bank clearings, 1938
	1930	1939		
Chico	7, 961	9, 500	$91, 377	No record
Marysville [1]	5, 763	8, 010	71, 557	No record
Yuba City [1]	3, 605	9, 750	30, 903	No record
Merced	7, 066	12, 000	80, 495	$16, 270, 616
Modesto	13, 842	33, 000	160, 540	132, 372, 043
Red Bluff	3, 517	4, 225	36, 813	12, 389, 351
Stockton	47, 963	69, 000	358, 991	109, 803, 835

[1] Marysville and Yuba City are considered as one city. These figures were submitted by the United States Post Office Department. The population estimates for the year 1939 are based upon a count of the carrier stops at each of the proposed points multiplied by three and one-half.

The proposed intermediate points are located in the Great Central Valley of California, an agricultural, mining, lumbering, and manufacturing area with special attractions such as national parks. This region is also the site of the Central Valley Project, authorized by the Federal Rivers and Harbors Act of 1937 and now under construction at an estimated total cost of $170,000,000. The project includes the Shasta Dam on the Sacramento River, 38 miles from Red Bluff, and the Friant Dam on the San Joaquin River, near Fresno. These dams, in connection with canals, transmission lines, and pumping stations, are intended to regulate the flow of the San Joaquin and Sacramento Rivers, to stabilize the flow of water for irrigation purposes, and to effect improvements in navigation, flood control, power development, and the reclamation of lands. Construction work on the Shasta Dam has been in progress for some time. It is expected that work on the Friant Dam will soon be started and that the major part of the entire project will be completed by the end of the year 1943.

The record discloses that the personnel engaged in the construction of the Central Valley Project would have occasion to use the proposed service to some extent, and that a more speedy mail and express service would be advantageous, particularly for the handling of blue prints and machine parts required in an emergency. Existing air service is used considerably for travel between Los Angeles and Oakland or Sacramento and between Oakland or Sacramento and cities in other parts of the country where the construction firms have their principal offices.

All of the proposed points have experienced substantial population increases since 1930 and the Central Valley Project is expected to encourage further growth by the stimulation of industrial and agricultural activity. Some increase has already been felt in and around Red

Bluff. While gradual benefits may be expected as the work on this project progresses, it would seem that the permanent and substantial results anticipated will not be realized before the project nears completion.

It is estimated that there are between 75,000 and 80,000 people within 1 hour's automobile travel of the city of Red Bluff. Lassen Volcanic National Park, which was visited by approximately 73,000 people in 1938, is nearby. The Red Bluff airport is the only one in the vicinity of Shasta Dam which can be used by Douglas DC–3 equipment at the present time.

A witness for the city of Chico estimated that there are 12,000 people in the city proper, 35,000 within an 8-mile radius and 80,000 within a 50-mile radius comprising a trade area of 20 communities. Richardson Springs, a well known health resort, is only 12 miles from Chico. In the past Chico has been used as the location for several major motion picture productions and it appears that the industry may continue to use this location in the future. Planes have at times been chartered for use during such periods.

Marysville and Yuba City, separated only by the Feather River, may be treated as one city. A witness estimated that there are 63,000 people in a trade area extending 35 miles east and west and 50 miles north and south of those points. Marysville is located in Yuba County, an important fruit producing area which also ranks second in gold production among the counties of California. As a part of the Central Valley Project, a dam is being constructed at Narrows, 15 miles from Marysville, for the purposes of irrigation and flood control.

Stockton, with a retail trade area population estimated at 500,000 people, is a city of considerable economic importance having 284 manufacturing and 174 wholesale and distributing establishments. Modesto is the trade center of an estimated 90,000 persons residing within a 25-mile radius. Merced, the center of an estimated trade area consisting of 50,000 people, is the gateway to Yosemite National Park. During the period from October 1, 1937, to September 30, 1938, 443,325 persons visited the park, approximately 234,000 entering by way of the all-year highway at Merced.

Additional evidence in the form of testimony and exhibits was presented in regard to each of the proposed stops, setting forth detailed economic data and such factors as the industrial facilities of each city, the prospective use of the service by particular business concerns, and the branch offices of national business organizations located at each city which would presumably have use for the service. Similar evidence was introduced with respect to Fresno, Oakland, San Francisco, Sacramento, and Los Angeles, designed to show the economic importance of each and the community of interest existing in the entire valley and bay areas. For example, out of 100 San Francisco firms having branches at one or more of the proposed intermediate points 76 are present users of United's service to cities now served in California. It was predicted that the state departments at Sacramento, the capital of California, would find the new service quite valuable.

Each of the six cities adopted resolutions endorsing United's proposed operation. With the exception of Marysville, each offered compilations of answers to questionnaires submitted to residents and business concerns by the local chambers of commerce. It is contended that these disclose a considerable interest in the proposed service and an intention to use it if established. While we recognize the difficulty of securing accurate factual data in proceedings of this nature, such statements, prompted by civil enthusiasm or by specialized interests, are apt to be very optimistic, and their value in forecasting the actual amount of use of the service is speculative. Even those persons responding to the questionnaires who disclaimed any intention of using the service at all or to any appreciable extent were in favor of it.

The testimony discloses that Railway Express Agency, Inc., handled 670 air-rail or rail-air shipments to and from the proposed points during the year ending July 31, 1939. From a comparison of Modesto and Stockton with other points regarded by it as comparable, the Agency predicted that there would be a substantial use of air express at the points involved in this proceeding.

The passenger traffic report prepared by the Federal Coordinator of Transportation for the year 1933 shows a total of 7,993 one way and 15,190 round trip passages by railroad from Stockton to points served by United and connections, and a total of 6,931 one way and 10,569 round trip passages by railroad to Stockton from points served by United and connections. Similarly, there were 12,280 one way and 4,294 round trips from Stockton, and 12,941 one way and 6,451 round trips to Stockton, by highway. The report did not include traffic figures relative to the other cities involved in this proceeding.

Based upon previous experience United estimates that it can expect to receive passenger business equal to approximately 9 or 10 percent of long haul first-class rail travel. Of the railroad passages from Stockton, however, 5,004 of the one-way and 13,302 of the round-trip passages were to Sacramento and San Francisco and its suburbs; of those to Stockton, 5,362 of the one-way and 9,580 of the round-trip passages were from Sacramento and San Francisco and its suburbs. Relatively few passengers between these points could be expected to

travel by air. There remained but 1,989 one-way and 1,888 round-trip railroad passages from Stockton, and 1,569 one-way and 989 round-trip railroad passages to Stockton, indicating a total of 9,312 rail travelers between Stockton and points other than Sacramento or the San Francisco area during the year 1933. A similar preponderance of local short haul business exists with respect to highway travel.

Upon the basis of a traffic survey of the proposed intermediate points and a comparison with Monterey, Calif., Walla Walla, Wash., Fresno, Calif., Pendleton, Oreg., and Elko, Nev., cities now served by United and regarded by it as comparable in population and the type of service offered, it was estimated that the sale of United service in the proposed new points should amount to approximately $110,000 per year, without giving any consideration to special activities or attractions. A load factor of 60 percent, or six passengers per trip was predicted. Although the cities used as the basis for this estimate

are comparable in population the difference in their locations with respect to economic and transportation centers tends to diminish their comparative value from the standpoint of air traffic potentialities. United concedes furthermore that the estimate of $110,000 is not entirely attributable to the proposed operation since it includes not only the additional passenger revenue on route No. 11, but also revenue from travel between the proposed points and other points on United's system. There is no evidence as to how much of the estimated revenue is allocable to the new service alone, although United asserts that the estimate is conservative and that the increase to the entire system will be in excess of the operating cost of the new service.

The evidence reveals that adequate surface transportation facilities are available at the proposed points. A summary of rail and bus schedules showing their frequency and the minimum elapsed time as compared to the elapsed time of United's proposed operation is shown below:

[Time shown in hours and minutes]

	San Francisco			Los Angeles			Sacramento			Fresno		
	Number of schedule	Time	Air time	Number of schedule	Time	Air time	Number of schedule	Time	Air time	Number of schedule	Time	Air time
Train		H. M.	H. M.		H. M.	H. M.		H. M.	H. M.		H. M.	H. M.
Red Bluff	2	5 36	2 35	2	18 25	5 28	2	4 02	1 23	2	9 58	3 20
Chico	4	5 43	2 07	1	16 58	5 00	6	2 45	55	1	8 43	2 52
Marysville	7	4 13	1 38	1	15 40	4 31	9	56	26	1	7 25	2 23
Stockton	10	2 07	34	2	11 50	3 24	4	1 02	26	7	1 58	1 16
Merced	7	3 12	1 20	2	9 45	2 38	2	3 30	1 17	9	55	30
Modesto	2	3 22	56	2	10 37	5 02	2	2 37	53	4	2 12	54
Bus												
Red Bluff	6	5 52	2 35	4	19 41	5 28	9	3 37	1 23	4	9 52	3 20
Chico	3	6 55	2 07	3	16 06	5 00	3	3 26	55	3	9 11	2 52
Marysville	3	4 38	1 38	3	14 05	4 31	10	1 25	26	3	7 10	2 23
Stockton	14	2 25	34	16	7 20	3 24	7	1 26	26	14	2 56	1 16
Merced	19	3 40	1 20	20	6 09	2 38	6	3 42	1 17	21	1 14	30
Modesto	19	2 17	56	18	8 09	3 02	6	2 30	53	20	2 11	54

The approximate highway mileages between each of the proposed points and the nearest point at which existing air service is available are shown below:

City	Nearest point served by air	Approximate highway mileage
Red Bluff	Sacramento	140
Chico	do	100
Marysville	do	55
Stockton	do	50
Modesto	do	80
Merced	Fresno	60

A mail count made by the Post Office Department for the period July 22 to 28, 1939, inclusive, disclosed the following mail movements at the proposed intermediate points:

	Pieces air mail handled (daily average)		Volume first-class mail handled (daily)			
			Received		Dispatched	
	Dispatched	Received	Weight	Pieces	Weight	Pieces
Chico	125	166	231	9, 942	186	9, 152
Marysville	111	127	267	13, 353	252	12, 614
Yuba City	40	48	65	3, 250	44	2, 200
Merced	133	249	116	5, 800	129	6, 450
Modesto	223	251	265	13, 250	238	11, 900
Red Bluff	102	92	95	5, 280	93	4, 455
Stockton	713	600	868	41, 900	727	36, 350

Upon the basis of this count, it appeared that from 60 to 75 percent of the air mail originating at these points was addressed to the Eastern States.

United's proposed daylight schedules would advance the delivery of mail originating in southern California to the offices at Merced, Modesto, and Stockton and possibly Marysville, by approximately 12 hours over the time now required by train. Some benefit would result from the service to the east as far as Omaha and Chicago, although second morning delivery in New York would not be improved. The transportation of mail would also be expedited between Red Bluff and Los Angeles, and between San Francisco and Oakland and the proposed points north of San Francisco. No benefit would be realized in other instances because of the early departure of connecting schedules or the failure to connect with particular deliveries. While the benefits to be derived are admittedly dependent upon the schedules ultimately provided, it appears that in this case a very substantial improvement of the mail service could be effected only by the inauguration of additional schedules and night operations.

The additional capital investment required is estimated at only $4,870, as the aircraft necessary for the proposed operation are presently owned and operated by United. Annual flying costs are estimated at $62,123, based upon 23 cents per mile direct operating costs, and annual ground, advertising, and traffic expenses are estimated at $18,929.95, or a total of $81,052.95 as the annual cost of the service.

It was estimated by a witness for the Post Office Department that, upon the basis of a mail rate of 35 cents per mile and 707 miles of flying daily, the proposed service would cost the Government $90,319.25 per year in mail compensation, or $77,481.85 with Sundays and holidays excluded. The figure of 35 cents per mile was merely the basis for an estimate, and may, as United contends by exceptions and on oral argument, be disproportionate; but, whatever the exact figure might prove to be, it appears that the service would necessitate substantial payments by the Government, and this cost must be weighed against the prospective value of the service to the public.

The proposed stops at Merced and Modesto are located on the Los Angeles-San Francisco airway and no additional navigation facilities would be required in order to provide for service to those points. There are no beacons to tie in the proposed stop at Stockton to either Oakland or Sacramento, but radio guidance from Sacramento to Stockton and thence to a tie-in with the Fresno-Oakland route could be furnished by reorientation of the southwest course of the Sacramento radio range. Flights could not be dispatched to Stockton under instrument approach conditions, although this contingency could be provided for by the installation of a low powered radio localizer at that point. The installation of a localizer of the type regularly used on the airways would involve an installation cost of $30,000 and an annual operation and maintenance cost of $10,000. It does not appear that airways lighting should be necessary, but, if required, lighting facilities from Oakland to Stockton to Sacramento would cost $18,000 to construct and $3,000 annually to operate and maintain.

There are no facilities on the direct course from Sacramento to Red Bluff via Chico and Marysville and none would be required for limited daylight operation. However, in order to maintain regular night schedules and to dispatch to those points under instrument approach conditions, it would be necessary to establish a radio station at Chico, the installation cost of which would be $30,000 with an estimated annual maintenance cost of $10,000. One course of the Sacramento radio station could be reoriented towards Marysville to furnish partial range coverage on this route. Additional lighting facilities would be unnecessary other than at the Marysville and Chico airports since this route is so close to the line of existing facilities on the Oakland-Red Bluff airway. The proposed operation would require the establishment of weather reporting facilities at Merced, Stockton, Marysville, and Chico.

Although nominal in the first instance, the cost to the Government for navigation aids would, as is probable in the case of mail payments, be increased with the inauguration of a more complete and satisfactory service. Only limited daylight operations are now proposed, but

a consideration of the value of the proposed operation requires a weighing of the costs for navigation aids reasonably necessary for its complete development.

Considering United's present service in this area and the nature of the traffic which is expected from the proposed operation it seems

apparent that a fairly large part of the estimated sale of service is already being realized and that the increase to the system as a whole would be considerably less than $110,000. Because of the proximity of the proposed points to one another they cannot reasonably be expected to generate any substantial volume of local city to city air traffic. United expects that the bulk of the traffic would move to points more than one or two cities distant from the point of origin and that a sizable portion of it would flow into and from Sacramento and the San Francisco Bay area. United does not, however, expect to operate an exclusive valley service but is depending on considerable through business both to and from these points, through the connections provided to the north, south, and east. While inauguration of the proposed service might increase long-distance air travel to some extent, it would seem that the deterrent effect of traveling 50 miles, for example, to a point offering a desired air service would not influence a long-distance traveler to the same degree as it might one contemplating a shorter journey. To this extent, the estimated sale of service at the proposed points would not represent any appreciable increase to the system.

The frequency of rail and bus schedules over comparatively short distances further supports the conclusion that these points cannot be expected to develop any substantial volume of purely local traffic on a small number of air schedules. Furthermore should Red Bluff, now the point most remote from existing air service, be included as an intermediate stop the remaining five cities will be within 40 to 80 miles of available service. In only one case, Modesto, will this distance be more than 60 miles.

A city receiving a minimum of air service cannot be expected to develop a large volume of long-haul traffic when there are, within short distances, other cities having a greater frequency of air schedules. Even with the proposed service in operation a large proportion of the potential passengers might be expected to continue to travel to major traffic centers by surface transportation in order to avail themselves of the more frequent air schedules there available as well as to avoid a frequent change of planes. Use of the proposed service would present the possibility of changing planes one or more times, at Fresno, Stockton, Sacramento, San Francisco, or Red Bluff. Additional schedules and night operations to develop more fully the possibilities of the operation would, as previously indicated, increase the expense which the Government would incur due to the installation

of additional air navigation facilities and the probable increase in air-mail compensation. The prospective use of the service and its benefit to the public do not, in any event, appear at present to justify the probable cost to the Government.

Despite the evidence tending to establish a certain economic importance of the proposed points and a community of interest and traffic flow between them, we cannot conclude that the inauguration of new air service promises any considerable benefit to or use by those communities, with the exception of Red Bluff. The situation parallels one which we stated hypothetically in an earlier decision. If there is a district, not now served by air transportation, which seems likely under favorable conditions to develop a certain amount of air travel,

and if that district is removed (for example) 150 miles or more from the nearest point now served by air transport, it would be justifiable to take measures and anticipate governmental expenditures to establish and maintain air transport there which would not be justified for a district of the same size and the same traffic potentiality located (for example) only 30 or 40 miles by surface transportation from some point where air transportation is currently available.[4]

Red Bluff, although small, is the center of a heavily populated area and has the most suitable airport in the vicinity of the Shasta Dam. The cities of Merced, Modesto, and Stockton now have a greater frequency of bus and rail schedules than do Marysville, Chico, and Red Bluff. By stops at Red Bluff, air service can be furnished to a large area in the northern part of the Central Valley. Chico will then be only about 40 miles from available air transportation, as contrasted with a distance of 100 miles at the present time. Since Red Bluff is now an alternate airport for United and has radio facilities and sufficient personnel, the only additional cost of providing service will be an estimated expenditure of $350 plus the costs incurred by landing and taking off at that point on existing United schedules.

Section 401 (*d*) (1) provides that a certificate shall issue only if the applicant is "fit, willing, and able" to properly perform the air transportation for which authorization is sought and to conform to the provisions of the act and the rules, regulations, and requirements of the Authority issued thereunder. It is unnecessary to determine whether or not such a requirement is embodied in the provisions of section 401 (*h*) inasmuch as the evidence of record establishes that United meets this test. United's long record of successful operations plus its sound financial condition are sufficient to establish its fitness, willingness, and ability to perform the proposed service.

On the basis of the above findings of fact we conclude and find:

(*a*) That the public convenience and necessity require air transportation to and from Red Bluff and that United is fit, willing, and able properly to perform such air transportation, and to conform to the provisions of the act and the rules, regulations, and requirements of the Authority thereunder.

(*b*) That the public convenience and necessity do not require air transportation to and from Stockton, Marysville, Chico, Modesto, and Merced.

An appropriate order, amending the certificate of public convenience and necessity held by United Air Lines Transport Corporation for route No. 11 so as to designate Red Bluff, Calif., as an intermediate point thereon, and otherwise denying the applications filed herein, will be entered.

[4] Continental Air Lines, Inc., Boswell, Hobbs, Carlsbad Operation, Docket Nos. 265 and 285.

Branch, Ryan, Mason, Warner, Members of the Authority, concurred in the above opinion. Hinckley, chairman, did not take part in the decision.

Order

United Air Lines Transport Corporation having filed applications, under section 401 (h) of the Civil Aeronautics Act of 1938, for amendment of its certificate of public convenience and necessity for route No. 11 to include Red Bluff,

Stockton, Marysville, Chico, Modesto, and Merced, Calif., as intermediate points, with authorization to transport persons, property, and mail to and from said intermediate points, and the applications having been consolidated into one proceeding, and a full hearing thereon having been held, and the Authority, upon consideration of the record in said proceeding, having issued its opinion containing its findings of fact, conclusions and decision, which is attached hereto and made a part hereof, and finding that its action in this matter is necessary pursuant to said opinion:

IT IS ORDERED that the certificate of public convenience and necessity authorizing United Air Lines Transport Corporation, subject to the provisions of said certificate, to engage in air transportation with respect to persons, property, and mail, between the terminal point Seattle, Wash., the intermediate points Tacoma, Wash., Portland, Oreg., Medford, Oreg., Sacramento, Calif., Oakland, Calif., San Francisco, Calif., Monterey, Calif., Fresno, Calif., Bakersfield, Calif., Santa Barbara, Calif., and Los Angeles, Calif., and the terminal point San Diego, Calif., be, and the same hereby is, amended so as to authorize United Air Lines Transport Corporation, subject to the provisions of said certificate, to engage in air transportation with respect to persons, property, and mail between the terminal point Seattle, Wash., the intermediate points Tacoma, Wash., Portland, Oreg., Medford, Oreg., Red Bluff, Calif., Sacramento, Calif., Oakland, Calif., San Francisco, Calif., Monterey, Calif., Fresno, Calif., Bakersfield, Calif., Santa Barbara, Calif., and Los Angeles, Calif., and the terminal point San Diego, Calif.

IT IS FURTHER ORDERED that the exercise of the privileges granted by said certificate shall be subject to the terms, conditions, and limitations prescribed by section 238.3 of the Authority's rules and regulations (formerly Regulation 401–F–1) issued by the Authority on February 24, 1939, all amendments thereto, and such other terms, conditions, and limitations as may from time to time be prescribed by the Authority.

IT IS FURTHER ORDERED that the said certificate, as amended, shall be issued in the form attached hereto and shall be signed on behalf of the Authority by the chairman of the Authority and shall have affixed thereto the seal of the Authority attested by the secretary. Said certificate, as amended, shall be effective from the 28th day of June 1940.

IT IS FURTHER ORDERED that, except as to the air transportation with respect to persons, property, and mail to be authorized by said amendment of the certificate for route No. 11, the several applications herein of United Air Lines Transport Corporation be and the same are denied.

DOCKET NO. 9–401(B)–5 [1]

EASTERN AIR LINES, INC.—CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

(St. Louis—Nashville—Muscle Shoals Operations)

In the matter of the applications of Eastern Air Lines, Inc., for certificates of public convenience and necessity under section 401 of the Civil Aeronautics Act of 1938.

Decided June 28, 1940

Application of Eastern Air Lines, Inc., for certificate of public convenience and necessity under section 401 (*d*) (1) for air transportation of persons, property, and mail between St. Louis, Mo., and Nashville, Tenn., via Evansville, Ind., granted.

Application of Eastern Air Lines, Inc., for certificate of public convenience and necessity under section 401 (*d*) (1) for air transportation of persons, property, and mail between Nashville, Tenn., and Florence-Sheffield-Tuscumbia, Ala., granted, by ordering its certificate of public convenience and necessity for route No. 40 amended.

APPEARANCES:[2]

John T. Lorch, George A. Spater and *E. Smyth Gambrell,* for Eastern Air Lines, Inc.

John H. Wanner, for Civil Aeronautics Authority.

OPINION

BY THE AUTHORITY:

Eastern Air Lines, Inc., hereinafter called "Eastern," by application filed September 28, 1938, and amendment filed October 17,

[1] This report also embraces docket No. 230, application of Eastern Air Lines, Inc. These applications were consolidated for the purpose of hearing.

[2] The following persons entered appearances under Rule 4 (a) of the Rules of Practice: E. W. Mentel for St. Louis, Mo., and the St. Louis Chamber of Commerce; J. D. Beeler for Evansville, Ind., and the Evansville Chamber of Commerce; W. H. Dress for Evansville, Ind.; R. B. Beall, C. G. Blackard, and W. C. Roose for Nashville, Tenn.; W. T. Archer for Florence, Sheffield, and Tuscumbia, Ala.; C. S. Ragland for the State of Tennessee; R. Crumbliss for Chattanooga, Tenn.; F. K. Shaw for Atlanta, Ga., and the Atlanta Chamber of Commerce; S. Acker and J. H. Morris for Birminghan, Ala.; A. Roundtree for Montgomery, Ala.; V. Roberts for Moline, Ill.; and E. A. Warner for Waterloo, Ia.; Abbot P. Mills and Frederick A. Ballard for Pennsylvania-Central Airlines Corporation; and E. W. Sanford for Joint Air Lines Committee, Birmingham, Ala.

1938, seeks a permanent certificate of public convenience and necessity authorizing it "* * * to transport by air, passengers, baggage, other property and mail over and along the route in and between St. Louis, Mo., and Nashville, Tenn., * * *" and desires to operate via Evansville, Ind.

Eastern by application filed April 25, 1939, seeks a further permanent certificate of public convenience and necessity authorizing it "* * * to transport by air passengers, baggage, other property, and mail over and along the route in and between Nashville, Tenn., and Muscle Shoals (Sheffield-Tuscumbia), Ala., it being the desire and intention of applicant to have continuous certification from Chicago, Ill., over its present route through Nashville to Muscle Shoals (Sheffield-Tuscumbia) and thence over its present route through Birmingham, Montgomery, Tallahassee, and points beyond; and likewise to be able to operate through service (when certificate is granted) from St. Louis, Mo., Evansville, Ind., through Nashville and the above-mentioned Alabama points to points in Florida; and likewise to operate through schedules in reverse directions over the said routes and proposed routes; that is to say, while applicant herein is applying only for a new route as between Nashville and Muscle Shoals (Sheffield-Tuscumbia), applicant desires to have the privilege of operating local and express schedules over said proposed new route and to and through points beyond the specified termini in the system of the applicant; said transportation to be on regular schedules, with the privilege, however, of operating charter and other special contract service in conformity with law and the valid rules and regulations of public authority having jurisdiction of applicant and its operations."

The Authority, by order, consolidated the above two applications into one proceeding which was thereafter duly assigned for public hearing. After due notice to the public and all interested parties, in accordance with the provisions of the Act, the public hearing was held before Examiner Thomas L. Wrenn.

The examiner's report was duly served and filed on April 26, 1940. It recommended that the Authority find that Eastern is fit, willing, and able to perform the proposed transportation properly, and to conform to the provisions of the act and the rules, regulations, and requirements of the Authority; and that the transportation of persons, property, and mail between St. Louis and Nashville, via Evansville,

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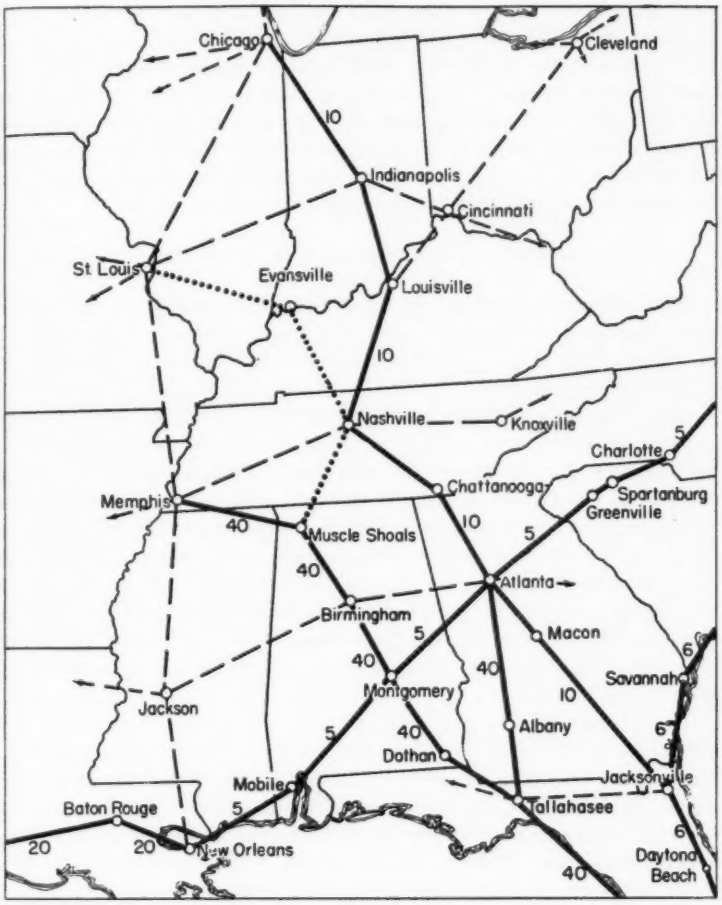
and between Muscle Shoals and Nashville is required by the public convenience and necessity; and that a certificate be issued to Eastern authorizing such operations. No exceptions to the examiner's report were filed.

Eastern is the holder of certificates of public convenience and necessity issued by the Authority, authorizing it to engage in the transportation of persons, property, and mail between the coterminal points New York, N. Y., and Newark, N. J., and the terminal point New Orleans, La., via intermediate points (designated as route No. 5); between the coterminal points New York and Newark, and the terminal point Miami, Fla., via intermediate points (designated as route No. 6); between the terminal points Chicago, Ill., and Jacksonville, Fla., via intermediate points (designated as route No. 10); between the terminal points Tampa, Fla., and Tallahassee, Fla.;

between the terminal points Tallahassee and Atlanta, Ga., via Albany, Ga., and between the terminal points Tallahassee and Memphis, Tenn., via intermediate points (designated as route No. 40); between the terminal points New Orleans, La., and Houston, Tex., via intermediate points (designated as route No. 20); and between the terminal points Houston and San Antonio, Tex., and between the terminal points Houston and Brownsville, Tex., via Corpus Christi, Tex. (designated as route No. 42). The total route mileage of these six routes is 5,324 miles. A part of Eastern's system with existing routes and the routes proposed in this proceeding are set forth in the map accompanying this opinion.

ST. LOUIS-NASHVILLE-MUSCLE SHOALS ROUTES



Eastern's present routes
Proposed routes
Other Air Lines

The portion of the act which in general governs the disposition of the applications involved in this proceeding is section 401 (*d*) (1), which provides that the Authority shall issue a certificate of public convenience and necessity authorizing air transportation if it finds that the applicant is fit, willing, and able to perform such transportation properly and to conform to the provisions of the act and the rules, regulations, and requirements of the Authority, and that public convenience and necessity require such transportation.

PUBLIC CONVENIENCE AND NECESSITY

The Authority in several opinions [3] relative to new route applications and applications for the extension of existing routes has discussed the meaning of the term "public convenience and necessity" and has outlined in detail the considerations which govern it in the disposition of such applications. These opinions indicate that the primary questions to be considered are, in substance, whether the new service will serve a useful public purpose responsive to a public need; whether this purpose can and will be served adequately by existing routes or carriers; whether it can be served by the applicant without impairing the operations of existing carriers contrary to the public interest; and whether the cost of the proposed service to the government will be outweighed by the benefit which will accrue to the public from the new service. Whether or not inauguration of the proposed air transportation herein considered is required by the public interest must be determined with these considerations in mind.

The additional mileage involved in the applications here under consideration is 410 miles, consisting of 302 miles between St. Louis and Nashville, and 108 miles between Nashville and Muscle Shoals. The airway mileages between the points which would be directly served by the new routes are shown in the following table. Kansas City and Birmingham have been included in this table since the new route would afford a comparatively direct service between those cities, and points north and south.

[3] Northwest Airlines, Inc. (*Duluth-Twin Cities Operation*), dockets Nos. 131 and 232; *Roswell, Hobbs, Carlsbad Operation*, dockets Nos. 265 and 282; *Daytona Beach-Jacksonville Operation*, dockets Nos. 5-401 (B)-1 and 222; dockets Nos. 9-401 (B)-1 and 203. See also Transcontinental & Western Air, Inc., *Additional Mail Service*, dockets Nos. 295 and 297.

	Kansas City	St. Louis	Evansville	Nashville	Muscle Shoals	Birmingham
Kansas City		228	390	530	638	735
St. Louis	228		162	302	410	507
Evansville	390	162		140	248	345
Nashville	530	302	140		108	205
Muscle Shoals	638	410	248	108		97
Birmingham	735	507	345	205	97	

ST. LOUIS-EVANSVILLE-NASHVILLE OPERATION

The following table sets forth the principal cities which would be directly affected by a new route between St. Louis and Nashville via Evansville, together with their populations as reported in the United States Census of 1930:

City:	*1930 Population*
Kansas City, Mo	399, 746
St. Louis	821, 960
Evansville	102, 249
Nashville	153, 866
Chattanooga	119, 798
Atlanta	270, 366
Jacksonville	129, 549
Miami	110, 637
Total	2, 108, 171

Considerable evidence was adduced to show the importance of the cities to be served on the proposed new route as well as cities on other routes which would connect with it.

It is estimated that there are now some 4,555,000 people within a radius of 150 miles of St. Louis. According to the 1930 Census there was a population of 821,960 in St. Louis. It was said to be the sixth city of the United States in population, the largest city in the Mississippi Valley, and the largest manufacturing and distributing center west of the Mississippi River with the exception of Los Angeles. The principal industries are food and kindred products (including beverages), chemicals, iron and steel products, machinery and textiles. St. Louis has 36 main offices and 575 branch offices of insurance companies. With 34 banks it is the largest financial center in the Mississippi Valley. Its transportation services include 19 trunk-line railroads, over 300 truck lines, of which 25 connect with cities on the proposed route, and several bus lines. There is also considerable river traffic on the Mississippi and its tributaries originating or terminating in St. Louis.

According to the 1930 Census, Evansville had a population of 102,249. It is situated in southern Indiana on the Ohio and Wabash Rivers. Although it is an important industrial center, served by five railroads, it is presently without scheduled air transportation facilities. Principal industrial concerns, of which there are 213, engage in the manu-

facture of refrigerators, foods, automobiles, furniture, and cigars, as well as the production and refining of oil and the packing of meat. There are two barge lines, over 50 common and contract motor carriers, and a major bus line serving Evansville. For the 140 producing oil wells out of 220 drilled within a 50-mile radius, there is one refinery in operation and two are being constructed in the vicinity.

According to the 1930 Census the population of Nashville was 153,866. It is one of the country's largest centers for the production of rayon and cellophane. Other important industries are printing and publishing, processing phosphate, meat packing, and the manufacture of stoves and ranges, tobacco products, and railway equipment. Construction has just been started on a million dollar plant for the manufacture of airplanes. Besides being an important wholesale and retail distributing center, it has 6 banks, two large insurance companies and many branch offices of insurance companies. The city is also an important shoe manufacturing center with a number of plants, including one of the largest in the United States. The manufacturers obtain many supplies and much shoe machinery from St. Louis, the machinery being leased from St. Louis firms who also service it, thus necessitating constant travel by service men between that city and Nashville. It is served by 3 railroads and 124 motor truck companies. It has also extensive bus service, some river transportation, and 2 air lines.

The proposed route, in addition to giving Evansville air service and providing direct air service between St. Louis and Nashville, will join Eastern's route 10 at the latter city to connect by air service St. Louis and cities to the west and northwest with southeastern cities, including Chattanooga, Atlanta, and Florida points.

According to the 1930 Census, Chattanooga had a population of 119,798. It has 444 manufacturing plants producing upward of 1,500 different articles, among which are textiles, boilers and tanks, farming implements, furniture, and plumbing supplies. Besides being a wholesaling and banking center, it is a tourist center of importance. Chattanooga is served by 4 railroads and 4 United States highways, over which run numerous bus and truck lines. It is also served by Eastern's route between Chicago and Miami.

By 1930 Census figures the population of Atlanta was 270,366. It has 11 banks and trust companies and is headquarters for the sixth Federal Reserve district, ranking first in bank clearings among southern cities and thirteenth among cities of the United States.

Atlanta is one of the most important manufacturing, wholesale and retail centers in the South, and is also Army headquarters for the Fourth Corps Area. It is served by 8 railways, two air lines, and several bus and truck lines.

Miami had a population of 110,637 by the 1930 Census. Besides being an important winter resort center, it is the largest port of entry by air in the United States, with schedules on Pan American Airways, Inc., to Caribbean, Central and South American points.

Hotel registrations in Chattanooga for January and March 1939, at 6 leading hotels were said to average 395 per month from St. Louis, Mo., Kansas City, Mo., St. Joseph, Mo., Omaha, Nebr., and Evansville, Ind., combined. In Atlanta a survey for a total of 5

months consisting of every third month beginning in July 1938 was said to indicate that there was an aggregate of 895 registrations from St. Louis, in Atlanta hotels. St. Louis ranked fourth out of a total of 40 cities included in the check, exculsive of points in Georgia and Tennessee.

There was testimony that 14 St. Louis businesses maintain branches in Evansville, 15 in Nashville, and 10 in Atlanta. Several other companies were said to have interests in Southeastern United States and South America which would require travel between St. Louis and those areas.

Figures taken from exhibit 1, section 2 of appendix 1 of the Passenger Traffic Report of the Federal Coordinator of Transportation for 1933, while not current, may be relied upon to some extent to show general tendencies in traffic flow. They are set forth below under separate headings for rail and highway, and represent the number of passengers moving both ways in 1933 between the points indicated. Each figure is obtained by totaling the number of one-way fares sold between points in each direction and twice the number of round-trip fares sold between points in each direction.

	Kansas City	St. Louis	Evansville
Rail			
Evansville	67	7, 867	----------
Nashville	112	6, 349	1, 981
Chattanooga	64	1, 103	282
Atlanta	485	2, 719	656
Jacksonville	363	767	93
Miami	502	1, 152	198
Highway			
Evansville	146	1, 739	----------
Nashville	129	478	0
Chattanooga	36	215	0
Atlanta	45	347	43
Jacksonville	42	115	0
Miami	423	240	54

The above figures indicate a substantial volume of traffic moving along the proposed route. The aggregate number of travelers in 1933, by rail and highway combined, between St. Louis and Kansas City on the one hand, and Nashville, Chattanooga, Atlanta, Jacksonville, and Miami on the other was 15,275. The Coordinator's report further shows that the aggregate traffic between Evansville and St. Louis and Kansas City in 1933 was 9,819, and that between Evansville and Chattanooga, Atlanta, Jacksonville, and Miami was 1,326. These volumes indicate the existence of a considerable demand for easy and rapid communications along the most direct route connecting the lower Missouri Valley with the Southeast, and connecting Evansville with both of these regions.

The Coordinator's report further shows that rail passenger movement from St. Louis to the southeast exceeded similar movement to

the northwest in the ratio of over 7 to 1, that the five cities with which Evansville had the most interchange of passenger traffic were Chicago, Louisville, St. Louis, Indianapolis, and Nashville in that order, and that Nashville's greatest passenger traffic movement was to Kentucky, Illinois, Alabama, Georgia, Ohio, and Missouri in the order named. St. Louis now has no direct air service to the southeast, Evansville has no air service whatsoever and Nashville has no direct air service to Alabama and Missouri.

While it is not possible to predict with any degree of accuracy the traffic which a new service will develop, it is desirable to attempt some proximation of the potential passenger revenue. By the inauguration of the new route, air transportation service would be brought to Evansville. The record does not include any estimates of the volume of traffic the applicant expects to develop in Evansville. However, data showing the air passengers by cities on the applicant's system for the month of November 1939, were incorporated in the record. For the purpose of comparison with Evansville, the following tabulation sets forth the population, 1933 rail traffic, the air traffic in November 1939, and the number of schedules of certain cities.

	1930 population	1933 number of rail passengers, both directions	Number of daily air schedules, November 1939	Number of passengers, Eastern's air traffic, November 1939	Average number of passengers per day
Evansville	102,249	111,612			
South Bend	104,193	72,719	5	[1] 663	22
Flint	156,492	25,814	4	[1] 152	5
Richmond	182,929	419,791	10	982	33
Mobile	68,209	197,368	2	112	4
Montgomery	66,079	216,961	4	123	4
Charleston	62,265	107,543	4	[1] 243	8
Savannah	85,024	192,642	4	143	5
Chattanooga	119,798	245,511	4	357	12
Charlotte, N. C	82,675	179,200	6	699	22

[1] South Bend is served by American Airlines and Flint is served by Pennsylvania-Central Airlines. Charleston is served by both Eastern and Delta Air Lines. With these exceptions all of the cities listed are served by the applicant only.

As indicative of the local traffic which might be developed between St. Louis and Nashville, the applicant referred to its experience between Nashville and certain other cities served by it. The following tabulation sets forth data with respect to rail passenger traffic, air mileage, and air traffic between these points:

Between Nashville and—	1933 rail passenger traffic	Air mileage	EAL traffic, 9 months, 1939	EAL estimate [1] of traffic, 1939	Percent of 1933 rail travel
Indianapolis	205	266	299	400	195
Atlanta	10,243	208	1,830	2,440	24
Jacksonville	474	490	412	550	116
Miami	433	835	692	925	213

[1] Estimated by projecting the actual traffic figures for 9 months to a 12-month basis.

It will be observed that with one exception the air traffic is in excess of the rail traffic shown by the Coordinator's report. The flow of rail traffic and the mileage involved on the route here under consideration is more nearly comparable with that between Nashville and Atlanta. If the air travel on the new route bore the same relationship to 1933 rail travel that is indicated for Nashville and Atlanta, a total of about 330 passengers per month would travel between the points directly served.

The new route would, in addition to providing more expeditious service to the three cities directly involved, provide a more direct route to other cities on the applicant's system. The applicant proposes to operate two flights between St. Louis and Nashville, one of which would continue to Florida east coast points, providing through service between St. Louis and Miami, Jacksonville, Atlanta, and Chattanooga. The other schedule would continue from Nashville to Muscle Shoals and Birmingham. It is the contention of the applicant that the new route would stimulate air travel to the southeast from St. Louis. An an indication of the increased travel which might be anticipated, reference was made to the greater number of passengers flying from Nashville on Eastern's direct route to southeastern points than now travel over the circuitous air route from St. Louis. Figures reflecting this comparison, in conjunction with 1933 rail traffic figures, are set forth in the following table:

Between	1933 rail traffic	Air passengers per month
St. Louis-Miami	1, 152	[1] 11. 5
Nashville-Miami	433	[2] 76. 9
St. Louis-Jacksonville	767	[1] 7. 25
Nashville-Jacksonville	474	[2] 45. 8
St. Louis-Atlanta	2, 719	[1] 12. 0
Nashville-Atlanta	10, 243	[2] 203. 3

[1] Data showing passengers originating at St. Louis for first 8 months 1939, assumption is made that the same number originated at other points for St. Louis.
[2] Eastern air traffic between the points for first 9 months 1939.

The applicant estimated that upon the basis of the ratio that the present air travel bears to the 1933 rail traffic between points having direct air connections it would carry a total of 334 passengers a month between St. Louis and southeastern points. This estimate does not include any passengers who might originate at or be destined to Evansville. It is recognized that any attempt to forecast traffic for a particular route must be somewhat speculative. However, upon consideration of the foregoing factors, it appears that Eastern's estimate of an average passenger load of six passengers is not unduly optimistic.

Since the applications here involved seek authorization to engage in the transportation of mail, we should consider the volume of mail which may move over the proposed route and whether the movement of mail will be expedited by the operation of the route. The 1939 postal receipts and bank clearings for the individual cities on the route, and the total transit and local air mail dispatched and received by each during 7-day counts in August and September 1939 are shown in the following table:

	St. Louis	Evansville	Nashville
1939 postal receipts [1]	$10, 684, 360	$692, 111	$2, 041, 672
1939 bank clearings [1]	$4, 210, 544, 648	$335, 640, 000	$904, 268, 055
Daily average pieces of air mail handled:			
Dispatched	55, 684	443	23, 104
Received	32, 820	448	2, 529
Daily average weight handled:	*Pounds*	*Pounds*	*Pounds*
Dispatched	1, 417	24	697
Received	729	18	74

[1] Fiscal year ended June 30.

An analysis of the mail flow out of St. Louis for the 7-day period shows the following local air mail and first-class mail dispatched:

	Air mail			First-class mail		
	Pieces	Pounds	Average pounds per day	Pieces	Pounds	Average pounds per day
St. Louis to:						
Evansville	84	2	¼	6, 609	188	24
Nashville	301	7	1	12, 219	331	47
Tennessee	2, 134	50	7	69, 495	1, 900	271
Georgia	1, 885	44	6	24, 421	549	78
Alabama	1, 215	29	4	27, 829	700	100
South Carolina	486	11	2	7, 047	170	24
Florida	2, 989	69	10	14, 765	388	55
Central and South America	117	26	4	5, 813	149	21
Total	10, 211	238	34¼	168, 198	4, 375	620

Notwithstanding the fact that Evansville had no air service during the period of the count referred to above, the post office dispatched a total of 2,812 pieces of air mail to all points and received for delivery in Evansville a total of 3,045 pieces of air mail. A route from Evansville to St. Louis would establish direct air-mail service from Evansville to the southwest, the west coast, the north and northwest through connection at St. Louis; while a route from Evansville to Nashville would establish service from Evansville to the southeast and east through connection at Nashville. During the period of the mail count, Evansville dispatched a total of 221,088 pieces of first-class mail to all points of which 8,830 pieces were dispatched to the southeastern States of Tennessee, Alabama, Georgia, Florida, and South Carolina.

The Nashville post office during the count period dispatched 123 pieces of air mail to St. Louis and 14,443 pieces of first-class mail to the State of Missouri. It also dispatched 416 pieces of air mail and 28,559 pieces of first-class mail to the State of Georgia to which it

now has direct air-mail service. It appears that the proposed route will command a considerable volume of mail which will be moved directly between points on the route.

Although air service between St. Louis and Nashville is now possible by indirect routes, Evansville is presently without air service,

being 125 miles by highway from Louisville, the nearest air transport point, and since March 6, 1940,[7] the only city in the country with a population over 100,000 and over 75 miles from the nearest point now served by air transportation which lacks authority for air service. The proposed operation would not only directly connect St. Louis and Nashville, but it would make possible, without change of planes or carriers, a direct service between the cities of St. Louis, Evansville, Nashville, Chattanooga, Atlanta, Jacksonville, and Miami. The importance of and community of interest between these cities has previously been pointed out. Furthermore, Evansville would be provided with air service, which the public convenience and necessity appear to require, and air service between St. Louis, Evansville, and Nashville could be maintained.

Existing elapsed times, mileages, and fares by indirect air routes from St. Louis to Nashville are as follows:

Via—	Minimum elapsed time	Mileage	One-way fare
	H. M.	*Miles*	
Indianapolis	5 47	508	$29.65
Dayton	5 46	645	38.40
Memphis	6 19	458	27.13
Cincinnati	10 04	574	32.95

Plans for the proposed operation include a schedule of 2 hours and 10 minutes between St. Louis and Nashville over a route 302 miles in length at a one-way fare of $18.20. The proposed service would thus effect a saving of approximately 3½ hours in minimum elapsed time, $8.93 in one-way fare and approximately 150 miles in distance between St. Louis and Nashville and certain other points to the southeast.

Since present schedules between St. Louis and Nashville are operated over portions of long-haul routes, the difficulties of making reservations and connections for local traffic are obvious. These difficulties would be avoided on the proposed route. The inconvenience of existing service between St. Louis and Nashville has no doubt been a reason for the fact that during the first 10 months of 1939 Eastern carried from St. Louis to Nashville only 40 passengers and to Chattanooga only 26 passengers.

[7] Northwest Airlines, Inc. (Duluth-Twin Cities Operation) Dockets Nos. 131 and 232 then decided, authorized air service for Duluth, Minn.

In view of the fact that present routings are so devious it would seem reasonable to predict that the proposed service will not adversely affect existing air carriers. On the other hand, traffic developed in St. Louis and Evansville would tend to increase revenues on Eastern's existing route 10 between Nashville and Jacksonville and to a lesser degree route 6 south from Jacksonville to Miami.

The cost to the Government of installing airway facilities is a factor that should be borne in mind in deciding whether or not a new route application should be granted. In considering this factor we note that although there are now in service at St. Louis and Nashville full-power vertical antenna type radio range and broadcast facilities with teletype service, none of the courses of the stations can be used for the route between St. Louis, Evansville, and Nashville except the northwest course at Nashville for the Evansville-Nashville leg. The cost to the Government for installing complete air navigation facilities on the route from St. Louis to Nashville was estimated at $166,100, of which $62,300 represents radio communication equipment and $103,800 represents field and lighting facilities, with an annual maintenance cost of $35,400, of which $23,500 is for radio maintenance and $11,900 is for field and lighting maintenance. When and if installed, these facilities would of course not only be available for the proposed operation, but also for military and private fliers, as part of the national airway system.

NASHVILLE—MUSCLE SHOALS OPERATION

The route sought between Nashville and Muscle Shoals would link Eastern's present Route 10 between Chicago and Jacksonville with the leg of its present Route 40 between Memphis and Tallahassee.

The following is a list of southeastern cities and their populations, not previously listed, which would be directly affected by the proposed new route between Nashville and Muscle Shoals:

City:	*1930 population*	
Florence	11, 729	
Sheffield	6, 221	
Tuscumbia	4, 533	
		22, 483
Birmingham		259, 678
Montgomery		66, 079
Total		348, 240

The cities of Florence, Sheffield, and Tuscumbia, Ala., which are in close proximity, are known as the "tricities" and are collectively designated as "Muscle Shoals". Within this area are the sites of the major dams of the Tennessee Valley Authority which furnish cheap hydroelectric power for the immediate region and other cities in the

Tennessee Valley Authority program. The Tennessee Valley Authority maintains a nitrogen fixation plant in the community completed and ready for use. There are iron ore, limestone, coal, phosphate, bauxite, marble, and pottery clay deposits in the area. Principal articles manufactured in the vicinity include iron and steel products,

cotton goods, wagons, rubber tires and tubes, bricks, and food products. A considerable future expansion in industry and population is expected by the community.

The effect upon the city of Birmingham is of primary importance in the consideration of the proposed route, as that city will be given a more direct service to northern industrial centers. Birmingham had a population of 259,678 by the 1930 census, with 382,792 in the metropolitan area. It is the major city of the South for iron and steel production and one of the most important in this respect in the country. Coke and cement production are other industries of importance.

The community of interest between the points on this proposed route does not appear to be so pronounced as in the case of points on the route between St. Louis and Nashville. However, regarding the route as a link between Eastern's existing routes serving the area, there appears to be sufficient community of interest between points on both routes to justify the inauguration of the proposed service. The Federal Coordinator's Report for 1933 does not give figures for traffic in and out of Muscle Shoals, but rail, highway, and air passenger figures for traffic from Birmingham and Montgomery to northern cities and return are available. The flow of passengers by rail between Birmingham and certain northern points was as follows:

Between Birmingham and—	*Rail passengers*
Nashville	6, 624
Cincinnati	5, 053
Louisville	2, 592
St. Louis	2, 366

There were also minor volumes to and from Evansville (422), Cleveland (333), Indianapolis (82), Columbus (44), and Dayton (33). The total flow by rail between Birmingham and all these points was 17,549 persons.

Between Montgomery and the same points the passenger traffic flow totaled 2,853 by rail, of which 1,152 were between Montgomery and Nashville.

The 1939 postal receipts and bank clearings for Nashville and the three Muscle Shoals cities and the total transit and local air mail dispatched and received by each during 7-day counts in August 1939 were as follows:

	Nashville	Muscle Shoals
1939 postal receipts [1]	$2, 041, 672	$107, 465
1939 bank clearings [1]	$904, 268, 055	$36, 127, 526
Daily average pieces of air mail handled:		
Dispatched	23, 104	88½
Received	2, 529	108
Daily average weight handled:		
Dispatched ---- pounds	697	3
Received ---- do	729	3

[1] Fiscal year ended June 30.

The proposed operation would reduce the fastest existing travel time for the journey by air between Birmingham and Nashville by 50 percent. It would make a corresponding reduction between Muscle Shoals and Nashville of 66⅔ percent. Reductions in air fare would amount to approximately 35 percent and 70 percent respectively. Furthermore a direct service without change of carrier would be provided, obviating the necessity of disturbing reservation arrangements on route 23, a long-haul route of American Airlines, Inc., over which it is now necessary to travel between Memphis and Nashville in making the journey between Birmingham or Muscle Shoals and Nashville by the fastest service.

The following table sets forth the saving of time in hours and minutes and the saving in mileage to northern points from Birmingham and Muscle Shoals which will result from the inauguration of the proposed route:

[Time shown in hours and minutes]

	Time in hours and minutes			Distance in miles		
	Proposed service	Fastest existing service	Difference	Proposed service	Shortest distance presently operated	Difference
Birmingham to—	*H. M.*	*H. M.*	*H. M.*			
Nashville	1 40	3 20	1 40	205	344	139
Louisville	2 55	5 30	2 35	375	514	139
Cleveland	6 00	8 30	2 30	693	832	139
Cincinnati	3 50	6 20	2 30	454	593	139
Indianapolis	3 55	5 43	1 48	483	622	139
Chicago	5 05	6 23	1 18	645	777	132
Detroit	6 59	8 05	1 06	784	832	48
Muscle Shoals to—						
Nashville	0 50	2 30	1 40	108	335	227
Louisville	2 05	4 40	2 35	206	493	287
Cleveland	5 10	7 40	2 30	596	823	227
Cincinnati	3 00	5 30	2 30	357	584	227
Indianapolis	3 05	4 53	1 48	374	601	227
Chicago	4 20	5 38	1 18	548	680	132
Detroit	6 09	7 15	1 06	687	823	136

In each instance, except to Cleveland, Chicago, and Detroit the difference between fares over the proposed route and the lowest existing fares between Birmingham and the above-named cities would result in a saving of $6.70. The savings to Cleveland, Chicago, and Detroit would be $0.95, $1.68, and $6.40, respectively. In the case of Muscle Shoals the proposed fares would be $14.75 lower than the existing fares to the cities named, except to Nashville, Indianapolis, Chicago, and Detroit. The saving over the existing air fares to the four latter cities would be $14.80, $11.78, $1.68, and $6.70, respectively.

The adverse effect on existing carriers appears to be very slight. It is rare that a new service can be inaugurated without some possibility of adverse effect on an existing carrier.

Cost of the airway facilities to the Government does not appear disproportionately large in the case of this route. One daylight round trip between Nashville and Muscle Shoals is planned for the initial stage of the proposed operation. It is estimated that the cost of establishing complete air navigation facilities for operations on the route would be $30,200 with $3,520 for the annual maintenance cost. These amounts represent only the cost of establishing and maintaining field and lighting facilities. A full-power vertical-type radio range and

broadcast station with teletype service is being completed at Muscle Shoals as part of the Memphis-Tampa Airway, the northeast course of which could be aligned along the proposed route. These facilities would also be available for military and private fliers.

ESTIMATED REVENUES AND EXPENSES FOR BOTH OPERATIONS

Eastern estimated without considering mail pay that for operating both proposed routes expenses would exceed revenue in the first year by $4,118, ($2,392 for the St. Louis-Nashville route and $1,726 for the Nashville-Muscle Shoals route). In making this estimate it was assumed that in the first year Eastern would carry an average load of six passengers per trip on two daylight round trips daily between St. Louis and Nashville and on one daylight round trip daily between Nashville and Muscle Shoals. It was further assumed that Eastern would realize its present revenue rates per passenger-mile. It was then estimated that by the addition of one passenger per trip per year and a 10-percent yearly increase in the excess baggage, express, and freight rates per mile for each year, substantial annual profits would result in subsequent years. It was argued that since the average number of pay passengers on Eastern's entire system for the year ending June 30, 1939, was 9.13 persons per trip, the estimate was not too optimistic. The unreliability of using the average for the whole of a heavily traveled system as a primary basis for estimating the average for a route not yet in operation seems obvious.

It was further shown that the routes would necessitate $12,825 additional capital expenditures and the employment of 28 additional persons. These additional capital expenditures would include the following items of new equipment:

	St. Louis	Evansville	Birmingham
Radio equipment	$6,000	$1,500	----------
Hangar and shop equipment	1,590	380	$625
Plane and engine parts	865	----------	865
Other	600	400	----------
Total	9,055	2,280	1,490

Seventeen new ground employees would be paid a total of $2,010 per month, or $24,120 for the first year. Thereafter salaries would be increased at the rate of 5 percent per year.

Eleven new flight crew employees would consist of four captains, four pilots, and three flight stewards. Douglas DC–2 equipment presently owned by Eastern would be utilized.

FITNESS, WILLINGNESS, AND ABILITY

It appears that the evidence of record clearly establishes that the applicant is fit, willing, and able to perform the air transportation for which a certificate is sought in this proceeding. The applicant's long record of successful operation, plus its sound financial condition, are sufficient to establish this fact.

CONCLUSION

From the above discussion it appears that air transportation between St. Louis and Nashville via Evansville and between Nashville and Muscle Shoals is required by the public convenience and necessity.

The question arises as to how the routes for the proposed operations should be connected with the presently existing system of routes. Eastern has not expressed any particular desire in this regard other than that contained in the language of its applications, quoted in the first part of this opinion, from which it appears that Eastern wishes to "have continuous certification" from Chicago to Florida points via Nashville, Muscle Shoals, Birmingham, Montgomery, and Tallahassee and to " be able to operate through service" from St. Louis to Florida points and return, via Evansville, Nashville, and the same intermediate points beyond Nashville. Insofar as it may be necessary or desirable to alter any of Eastern's existing certificates of public convenience and necessity to accomplish this purpose, we interpret

Eastern's request as invoking the provisions of section 401 (h) of the act whereby the Authority after notice and hearing may alter, modify, or suspend any certificate of public convenience and necessity in whole or in part, if the public convenience and necessity so require. After careful consideration we feel that the public convenience and necessity require and would be best served by establishing a new route between St. Louis and Nashville and extending Eastern's existing route No. 40 at Muscle Shoals to Nashville. This will permit establishment of the through service sought without change of airplane, subject only to the requirement that a stop be made at Nashville in all cases.

On the basis of the above findings of fact and the entire record in this proceeding, we conclude and find that Eastern is fit, willing, and able to perform the proposed transportation properly, and to conform to the provisions of the Civil Aeronautics Act of 1938 and the rules, regulations, and requirements of the Authority thereunder; that the proposed air transportation between St. Louis and Nashville, via Evansville, is required by the public convenience and necessity; and that the proposed air transportation between Muscle Shoals and Nashville as part of Eastern's route No. 40 is required by the public convenience and necessity.

An appropriate order will be entered, granting the applications filed herein by (1) authorizing the issuance of a certificate of public convenience and necessity to Eastern Air Lines, Inc., to engage in air transportation, subject to the provisions of such certificate, with respect to persons, property, and mail between the terminal point St. Louis, Mo., the intermediate point Evansville, Ind., and the terminal point Nashville, Tenn., and (2) amending the certificate of public convenience and necessity with respect to route No. 40, issued to Eastern Air Lines, Inc., on June 9, 1939, so as to authorize it, subject to the provisions of such certificate, to engage in air transportation with respect to persons, property, and mail between the terminal point Tampa, Fla., and the terminal point Tallahassee, Fla.; between the terminal point Tallahassee, Fla., the intermediate point Albany, Ga.,

and the terminal point Atlanta, Ga.; and between the terminal point Tallahassee, Fla., the intermediate points Dothan, Ala., Montgomery, Ala., Birmingham, Ala., Florence-Sheffield-Tuscumbia, Ala., and (a) beyond Florence-Sheffield-Tuscumbia, Ala., the terminal point Memphis, Tenn., and (b) beyond Florence-Sheffield-Tuscumbia, Ala., the terminal point Nashville, Tenn.

Branch, Ryan, Mason, Warner, Members of the Authority, concurred in the above opinion. Hinckley, Chairman, did not take part in the decision.

ORDER

Eastern Air Lines, Inc., having filed an application for a certificate of public convenience and necessity under section 401 (d) (1) of the Civil Aeronautics Act of 1938, authorizing it to engage in air transportation with respect to persons, property, and mail between St. Louis, Mo., and Nashville, Tenn., via Evansville, Ind., and having filed a further application for a certificate of public convenience and necessity under section 401 (d) (1) of the Civil Aeronautics Act of 1938, authorizing it to engage in air transportation with respect to persons, property and mail between Nashville, Tenn., and Florence-Sheffield-Tuscumbia, Ala.; both applications having been consolidated into one proceeding and a full hearing thereon having been held; and the Authority, upon consideration of the record in such proceeding, having issued its opinion containing its findings of fact, conclusions and decision, which is attached hereto and made a part hereof, and finding that its action in this matter is necessary, pursuant to said opinion:

IT IS ORDERED that there be issued to Eastern Air Lines, Inc., a certificate of public convenience and necessity authorizing it, subject to the provisions of such certificate, to engage in air transportation with respect to persons, property, and mail between the terminal point St. Louis, Mo., the intermediate point Evansville, Ind., and the terminal point Nashville, Tenn.

IT IS FURTHER ORDERED that the certificate of public convenience and necessity authorizing Eastern Air Lines, Inc., subject to the provisions of said certificate, to engage in air transportation with respect to persons, property, and mail between the terminal point Tampa, Fla., and the terminal point Tallahassee, Fla.; between the terminal point Tallahassee, Fla., the intermediate points Dothan, Ala., Montgomery, Ala., Birmingham, Ala., Florence-Sheffield-Tuscumbia, Ala., and the terminal point Memphis, Tenn.; and between the terminal point Tallahassee, Fla., the intermediate point Albany, Ga., and the terminal point Atlanta, Ga., be amended so as to authorize Eastern Air Lines, Inc., subject to the provisions of said certificate, to engage in air transportation with respect to persons, property, and mail between the terminal point Tampa, Fla., and the terminal point Tallahassee, Fla.; between the terminal point Tallahassee, Fla., the intermediate point Albany, Ga., and the terminal point Atlanta, Ga.; and between the terminal point Tallahassee, Fla., the intermediate points Dothan, Ala., Montgomery, Ala., Birmingham, Ala., Florence-Sheffield-Tuscumbia, Ala., and (a) beyond Florence-Sheffield-Tuscumbia, Ala., the terminal point Memphis, Tenn., and (b) beyond Florence-Sheffield-Tuscumbia, Ala., the terminal point Nashville, Tenn.

IT IS FURTHER ORDERED that the exercise of the privileges granted by said certificate and said certificate, as amended, shall be subject to the terms, conditions, and limitations prescribed by section 238.3 of the economic regulations of the Authority (formerly regulation 401–F–1), all amendments thereto, and such other terms, conditions, and limitations as may from time to time be prescribed by the Authority.

IT IS FURTHER ORDERED that said certificate—and said certificate, as amended—shall be issued in the form as attached hereto, and shall be signed on behalf of the Authority by the Chairman of the Authority and shall have affixed thereto the seal of the Authority attested by the Secretary. Said certificate, as amended, shall be effective from the 28th day of June 1940.

244435—40——6

DOCKET NO. 247 [1]

PENNSYLVANIA-CENTRAL AIRLINES CORPORATION—AMENDMENT OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Pittsburgh, Youngstown, Erie, Buffalo operations)

In the matter of the application of Pennsylvania-Central Airlines Corporation for an amendment under section 401 (h) of the act to the certificate of public convenience and necessity for its route between Pittsburgh, Pa., and Buffalo, N. Y., to authorize the transportation of mail, and to include Youngstown, Ohio, and Erie, Pa., as intermediate points.

In the matter of the certification by the Postmaster General pursuant to section 401 (n) of the act with respect to transportation of mail by aircraft between Pittsburgh, Pa., and Buffalo, N. Y., by way of Youngstown, Ohio, and Erie, Pa.

Decided June 28, 1940

Applicant found entitled to an amendment to its certificate of public convenience and necessity to authorize the inclusion of Erie, Pa., as an intermediate point on its Pittsburgh-Buffalo route.

Applicant found not entitled to an amendment to its certificate of public convenience and necessity to authorize the inclusion of Youngstown, Ohio, as an intermediate point on its Pittsburgh-Buffalo route.

Applicant found entitled to an amendment to its certificate of public convenience and necessity to authorize the transportation of mail on its route from Pittsburgh, Pa., to Buffalo, N. Y., via Erie, Pa.

APPEARANCES:

Frederick A. Ballard and *Abbot P. Mills*, for applicant.

Vincent M. Miles and *William C. O'Brien*, for Post Office Department.

Emory T. Nunneley, Jr. and *John H. Wanner*, for Civil Aeronautics Authority.

OPINION

BY THE AUTHORITY:

Pennsylvania-Central Airlines Corporation, pursuant to section 401 (*h*) of the Civil Aeronautics Act of 1938, seeks an amendment to its certificate of public convenience and necessity for the route between Pittsburgh, Pa., and Buffalo, N. Y., to provide for (*a*) authority to transport mail on said route, and (*b*) the inclusion of Erie, Pa., and Youngstown, Ohio, as intermediate points. The Acting Postmaster General, on August 17, 1939, certified to the Authority, pursuant to the provisions of section 401 (*n*) of the act, that the needs of the

[1] This report also embraces Docket No. 296, Certification by the Postmaster General.

Postal Service require the transportation of mail by aircraft between Pittsburgh, Pa., and Buffalo, N. Y., by way of Youngstown, Ohio, and Erie, Pa., in addition to the transportation of mail now authorized in the certificates of public convenience and necessity issued by the Authority on April 21, 1939, to Pennsylvania-Central Airlines Corporation covering service on air mail routes No. 14 and 34.

After due notice to the public and interested parties, a public hearing was held before Examiners Francis W. Brown and Thomas L. Wrenn of the Authority, after which the examiners' report was duly filed and served on January 18, 1940, recommending that the Authority find (1) that the public convenience and necessity require the amendment of the applicant's certificate to include Youngstown and Erie as intermediate points on its Pittsburgh-Buffalo route, and (2) that the public convenience and necessity do not require the amendment of the applicant's certificate to authorize the transportation of mail between Pittsburgh and Buffalo via Youngstown and Erie.

Upon request of the applicant a further hearing was held at which additional evidence was introduced upon the question of mail certification. Thereafter Examiners Brown and Wrenn filed a further report recommending that the Authority find that the public convenience and necessity require air transportation of mail between Pittsburgh and Buffalo by way of Youngstown and Erie and that the applicant's certificate be amended accordingly. No exceptions to this report were filed.

The certificate of public convenience and necessity which is sought to be amended in this proceeding was issued by the Authority on April 21, 1939,[2] pursuant to the terms of section 401 (*e*) of the act (the "grandfather" clause), the applicant being authorized to engage in air transportation with respect to persons and property between the terminal points, Pittsburgh, Pa., and Buffalo, N. Y. In this same proceeding, certificates were issued to the applicant authorizing it to engage in air transportation of persons and property between Pittsburgh, Pa., and Baltimore, Md.; to engage in air transportation of persons, property, and mail between Norfolk, Va., and Detroit, Mich., via intermediate points (designated as route No. 14); between Detroit, Mich., and Milwaukee, Wis., and between the intermediate point, Grand Rapids, Mich., and the terminal point, Chicago, Ill. (designated as route No. 32); between Washington, D. C., and Buffalo, N. Y., via intermediate points (designated as route No. 34); and between Detroit, Mich., and Sault Ste. Marie Mich., via intermediate points (designated as route No. 41). In addition to connections with other schedules of the applicant at Pittsburgh, the

[2] Pennsylvania-Central Airlines Corp., Certificate of Public Convenience and Necessity, Docket No. 18-401(E)-1.

Buffalo-Pittsburgh route affords connections at Pittsburgh with Transcontinental & Western Air, Inc., and at Buffalo with American Airlines, Inc.

Because of the fact that the addition of the intermediate points, Youngstown, Ohio, and Erie, Pa., is desired even though mail certification be denied, these two objectives which are sought by this application may conveniently be treated separately.

ERIE-YOUNGSTOWN OPERATION

It is immaterial whether we regard this application as being within the provisions of section 401 (d), section 401 (h), or section 401 (n), or as covered by a combination of all three.[3] Except for the provisions

of section 401 (d) relating to fitness, willingness, and ability of the applicant, the sole test established as a guide for action by the Authority under any one of these sections is the public convenience and necessity. Material in determining the public convenience and necessity for such a route are the provisions of section 2 of the Civil Aeronautics Act of 1938, particularly subsection (a).[4]

The record discloses that applicant's planes now fly over the Erie airport in the operations on applicant's Pittsburgh-Buffalo route and that, therefore, the designation of Erie as an intermediate point on that route would require no additional flight mileage. The inclusion of Youngstown as an intermediate point on the Pittsburgh-Buffalo route would increase the applicant's route mileage 13 miles.

The applicant introduced evidence tending to show that the whole area embracing Pittsburgh, Youngstown, and Erie, for which service is sought, is of the same industrial character, and consequently has a close community of interest. The largest city of the three, Pittsburgh, has a population of approximately 700,000 people, and is one of the centers of the steel industry of the world. Erie, whose principal industry is heavy industrial manufacture, is a city of about 116,000 persons located on the shore of Lake Erie. Youngstown is a city of about 170,000 people, whose metropolitan district, defined in the census as including an area within a radius of about 6 or 8 miles, has a population of 365,000. This Youngstown district is the third largest iron and steel producing area in the United States and is said to be the largest industrial center in the country without direct air service.

We find that in addition to the traffic naturally resulting from the community of industrial interest between Pittsburgh and Erie, a sub-

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[3] Transcontinental & Western Air, Inc., Mail Certification, Docket No. 295.

[4] "SEC. 2. In the exercise and performance of its powers and duties under this act, the Authority shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity—

"(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense; * * *."

stantial amount of travel between these two points results from the fact that both the United States District Court and the Pennsylvania appellate courts for the western district of Pennsylvania are located in Pittsburgh. A traffic flow chart of the Bureau of Public Roads shows that over 1,400 cars a day travel the route from Pittsburgh to Erie. The Passenger Traffic Report of the Federal Coordinator of Transportation, and a check of hotel registrations in Pittsburgh and Erie give further data on the amount of travel between the two cities. In 1933 approximately 10,000 persons made the trip by rail.

Four trains a day are operated between Pittsburgh and Erie, and 3 hours and 55 minutes is the best time for the trip. Between 5 and 6 hours are required for the trip by bus and about 3 hours are necessary for the automobile trip between these points. At present air service between Pittsburgh and Erie is available via Akron and Cleveland over lines of the applicant and American Airlines. This route, with an airport-to-airport mileage of over 220 miles, has little passenger traffic for the reason that on northbound flights the elapsed time

is approximately 2 hours and on southbound flights the elapsed time is 3 hours and 15 minutes. None of these transportation services can favorably compare with the proposed direct operations of the applicant over an airport-to-airport mileage of 120 miles, which would require only 52 minutes for the trip and at a fare of $5 less than over the route via Cleveland.

The records of the Erie airport show the amount of business handled at that point by American Airlines, which has two planes a day in each direction stopping at Erie on its route between Buffalo and Cleveland. During the winter months American averages nearly 40 outgoing passengers per month from Erie and during the summer over 100 outgoing passengers per month. The Pittsburgh Airways Co., operating between Pittsburgh, Erie, and Buffalo during the summer of 1931, carried an average of 2 passengers per trip out of Erie. The testimony of the manager of the Erie airport showed that about 40 inquiries a month have been received as to the availability of air service to Pittsburgh and points south.

The additional costs involved in a stop at Erie would total approximately $5,244 a year, mainly for salaries of a traffic representative and a station manager, and expense incident to the maintenance of an office at the Erie airport. The proposed fares for the Pittsburgh-Erie trip show that this expense would be covered by an average of two passengers a day between these points.

Although the inauguration of a stop at Erie would result in a duplication of service now provided by American Airlines between Erie and Buffalo, the flight involved is less than 100 miles, and the record does not indicate any substantial volume of traffic between these points. Moreover, where competitive duplication of service is

only incidental to the development of two or more routes which do not parallel one another through the major portion of their lengths, but which converge at some point and thence extend to a common terminal, the establishment of competing services is in some cases in furtherance of the objectives of the Civil Aeronautics Act.

A review of the evidence leads us to the conclusion that under the circumstances the inauguration of the proposed service to Erie should be authorized. It appears that the service would yield sufficient revenue to cover the expense involved, and would improve the present load factor on applicant's Pittsburgh-Buffalo route.

The industrial importance of Youngstown was emphasized at the hearing. It was stated that its 200 industries are served by 4 trunk-line railroads with more than one million freight cars required yearly to handle the freight tonnage. The steel industries of the city have 21 branch plants, 28 warehouses, and 69 sales offices throughout the United States and Canada.

Between Youngstown and Pittsburgh there are 17 train and 11 bus schedules daily, the train taking 1 hour and 30 minutes to make the journey and the bus taking 2 hours and 30 minutes. Between Youngstown and Erie there are 3 train and 5 bus schedules, the train taking 2 hours and 30 minutes and the bus 3 hours. Compared with this service, the proposed air schedule of the petitioner from Youngstown to Erie would require 32 minutes and from Youngstown to Pittsburgh

less than 30 minutes. The proposed air schedules would be adjusted so as to connect with other air-line service at Pittsburgh and Buffalo. The Superintendent of Air Mail testified that at the present time rail-air connections at Pittsburgh from Youngstown are not satisfactory for the purposes of air-mail service.

Considerable evidence was introduced to show the amount of business to be anticipated from a stop at Youngstown on the Pittsburgh-Buffalo route. For example, a survey of hotel registrations in Youngstown, Pittsburgh, and Buffalo revealed that a substantial number of guests from each of the other cities were registered at Youngstown hotels. In 1 month of 1939 total registrations from Pittsburgh, Erie, and Buffalo comprised approximately 20 percent of the total registrations in one Youngstown hotel.

Air transportation sold by one travel bureau in Youngstown during the period from September 1938 to August 1939 averaged $500 a month, in spite of the fact that persons in Youngstown wishing to use air service had to travel from 50 to 75 miles to Akron, Pittsburgh, or Cleveland to board planes. In addition to these sales, business concerns in Youngstown during a recent month bought air transportation under the scrip plan valued in excess of $2,400. Youngstown was a stop on the Pittsburgh-Cleveland route of Pennsylvania

Airlines, Inc., applicant's predecessor, during the period between 1927 and 1931. During the last year of the service, at least two passengers a day were carried in and out of the city. Testimony showing that there is a demand for an air-express service was also introduced. One plant in the metropolitan district of Youngstown now ships approximately 1,000 pounds of air express a week to Detroit.

The only capital expenditures which would be incurred by the applicant in the inauguration of the proposed stop at Youngstown would be in connection with the installation of a 50-watt radio station at a cost of about $1,000. This outlay would be depreciated at the rate of about $324 a year which, when added to the annual cost of an office force, including the salary of a station manager and maintenance expenses, would aggregate $3,264 per annum. Applicant's direct flying costs as determined by the Authority in its mail rate case were approximately 30 cents per mile.[5] On this basis the direct flying costs involved in the operation of 52 additional miles per day would amount to $5,694 and would bring the total expenditure involved in the inauguration of a stop at Youngstown to approximately $8,958 a year.

While the evidence of record indicates that a considerable volume of traffic could be developed from service at Youngstown, this alone is not necessarily conclusive. In exercising our functions relative to the inauguration of new air-transportation services, we are directed by section 2 (*a*) of the act to consider "The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense." This statutory mandate requires that if a new service is to be authorized it must, in addition to presenting a reasonable prospect

for the development of a satisfactory volume of traffic, fit logically into the existing air-transportation system. In connection with this latter phase of the case as it relates to the Youngstown stop, the traffic flows in and out of Youngstown, as revealed by the report of the Federal Coordinator of Transportation, are significant.

[1] Pennsylvania-Central Airlines, Airmail Compensation, Docket No. 18-406 (A)-1.

The following table shows the traffic flow between Youngstown and certain points as shown by the Coordinator's report:

Between Youngstown and—	*Total trips*[1]
Pittsburgh	74, 957
Erie	1, 849
Buffalo	3, 630
Rochester	332
Syracuse	315
Boston	705
Cleveland	98, 316
Akron	19, 515
Detroit	5, 005
Chicago	17, 120
Toledo	1, 306
New York City	7, 985
Washington	2, 368

[1] These figures include rail and highway travel.

The total traffic in and out of Youngstown, as shown by the Coordinator's report, is 387,123, and the traffic between the 13 points listed above accounts for 233,403 of that total. Traffic between Youngstown and any single point not listed is comparatively small.

It is not to be anticipated that any great amount of local Pittsburgh-Youngstown traffic will be derived from the proposed service. The nearness of the two cities and the frequency of bus and train schedules serve to emphasize the significance of any air service to Youngstown as providing through air service to more distant points than Pittsburgh. It is evident from the above tabulation that the major flows of traffic in and out of Youngstown, excluding Pittsburgh traffic, are to and from points in the East, West, and Northwest. If Youngstown were made a point on applicant's Pittsburgh-Buffalo route, service to such of these points as Cleveland, Detroit, and Chicago would not be provided except by connections with other routes at Erie or Pittsburgh, which would require that traffic be carried over a portion of its journey in a direction contrary to that of its ultimate destination. Under these circumstances, if Youngstown is to be included on an existing air service in a manner which will be most consistent with the directions of traffic flows, it would appear that its inclusion on some other route or routes would be more logical than its inclusion as an intermediate point on the Pittsburgh-Buffalo route. Other existing routes upon which Youngstown might be included as an intermediate point offer more direct service to Cleveland, Akron, Chicago, Detroit, and New York which would more nearly satisfy the transportation demand as revealed by the Coordinator's report, and would at the same time give equally as good service to Pittsburgh and Washington as would the proposed operation.

A further point of significance concerns the effect of the proposed addition upon the convenience of travelers between Pittsburgh and Buffalo. Each intermediate stop added, with the delays which it occasions in landing, taking off, and climbing again to operating altitude, lengthens the scheduled time between the terminals and to that extent diminishes the value of the service. It is necessary, in order that public convenience and necessity may be found to require the addition of an intermediate stop, that the inconvenience and delay to users of the service other than those originating or terminating their use at the proposed intermediate point should be counterbalanced by the benefits resulting from the addition of the new point. There has been no evidence of a need for service between Youngstown and Erie, or Youngstown and Buffalo, which would justify the burden on the Pittsburgh-Buffalo operation for through travelers that the addition of Youngstown as a new point on this particular route would entail.

Therefore, although there appears to be justification for the inauguration of an air service to Youngstown, the designation of that city as an intermediate point on applicant's Pittsburgh-Buffalo route does not seem consistent with the mandate in section 2 (*a*) of the act, in that the present and future needs of the domestic commerce of the United States would be better served by the inclusion of Youngstown as a stop on some other route providing more direct service to those cities in the East, North, and West to which traffic flows are greatest.

MAIL AUTHORIZATION

Section 401 (n) of the Civil Aeronautics Act provides that whenever the Postmaster General shall find that the needs of the Postal Service require the transportation of mail by aircraft between any points he shall certify such finding to the Authority and file a statement showing such additional service required and the facilities necessary in connection therewith. By the same section the Authority is directed to make provision for such additional service, and the facilities necessary in connection therewith, by issuing a new certificate or certificates or by amending an existing certificate or certificates, provided such action is found by it to be required by the public convenience and necessity. This standard, i. e., the public convenience and necessity, is obviously more comprehensive in scope than the particular needs of the Postal Service. Although the certification of the Postmaster General relative to the postal needs is entitled to great weight because based upon the informed policy and expert knowledge of the Post Office Department on the subject, the final answer is left in the hands of the Civil Aeronautics Authority, in which the act has vested the duty of determining the broad question of public convenience and necessity.[6]

[6] For a complete discussion of this question see Continental Air Lines, Inc., certificate of public convenience and necessity (Roswell, Carlsbad, Hobbs Operation), docket No. 265.

With these principles in mind, the issue of the mail certification for the Pittsburgh-Buffalo route is presented to us in two aspects. First such mail certification is sought to be justified on the grounds of the

need for service to, from, and between Pittsburgh, Erie, Youngstown, and Buffalo. Secondly, such mail certification is desired in order to provide an alternative route between Buffalo and Washington.

Having already determined that Youngstown should not be included as an intermediate stop on the Pittsburgh-Buffalo route, we need not include in this phase of the case any discussion of the needs of that city for mail service, especially when there is no indication in the evidence bearing on the mail certification of any particular reason why Youngstown should be included on the route in question rather than on some other route.

The community of interest of the cities proposed to be served was particularly emphasized at the hearings. Their industrial complexion was shown to be substantially the same, the principal industry of all three cities being the manufacture of some form of iron or steel product. As a result, there is a great deal of commercial contact between them.

There is considerable evidence of record to show that mail deposited in the post office at Buffalo or Erie in the evening would not be transmitted to Pittsburgh for the first morning delivery. The same situation prevails north-bound out of Pittsburgh. This difficulty is due partly to the relative slowness of railroad transportation and secondly to a maladjustment of schedules to the needs of business. Present air mail service from Buffalo and Erie to Pittsburgh via American to Cleveland and Pennsylvania-Central to Pittsburgh affords no saving in time over normal first-class mail service.

The applicant is now operating between these two places two round trips a day upon a schedule adapted to the needs of the postal service in that the evening schedule would take care of the bulk of the business mail if the transportation of mail over the route is authorized.

The proposed schedules of applicant would connect with the transcontinental routes of Transcontinental & Western Air and of American Airlines at Pittsburgh and Buffalo, respectively. These schedules would also provide improved mail service by furnishing connections with applicant's Washington-Detroit route at Pittsburgh. Washington must be regarded as the gateway to the South, and the most expeditious route for the transportation of mail to that section from western New York, western Pennsylvania, and eastern Ohio, as well as parts of Canada, is over Pennsylvania-Central Airlines to Washington. Extensive testimony was introduced as to large commercial intercourse between this territory and the South, Southeast, and Latin America. The proposed route will result in a substantial saving in time between Erie and the South and Southeast. In addition, service

to Canada from Pittsburgh and Erie would be expedited whether or not an air mail route is established between Buffalo and Toronto. At the latter city air mail connections over Trans-Canada are available both east and west in the Dominion.

The establishment of the proposed air-mail service between Buffalo and Pittsburgh would improve the mail service available between the territories reasonably adjacent to the two cities. By means of train service at each end, this proposed air-mail service could be used to expedite communication between the industrial areas of southern

Pennsylvania and northern West Virginia and the similar area of western New York.

A witness for the Post Office Department stated that it was the desire of the Department to utilize the applicant's route between Pittsburgh and Buffalo as an alternative route between Washington and Buffalo. At the present time air-mail service between Washington and Buffalo is provided on applicant's route 34 via Baltimore, Harrisburg, and Williamsport, but the witness pointed out that if the present application is granted, an alternative route would be available through connections with applicant's route 14 at Pittsburgh.

It was said to be the desire of the Post Office wherever possible to provide two daily round-trip schedules between terminal points. The Department's certification of the applicant's Buffalo-Pittsburgh route in preference to the establishment of a second schedule upon route 34 is based partly upon its desire to provide an alternative route which would be available in case weather difficulties prevented performance of schedules on route 34 and partly upon a desire to provide the service most beneficial to the public as a whole. The theory is that the public interest would be better served by the certification of the Pittsburgh-Buffalo route via Erie than by the addition of another schedule upon route 34.

Another factor influencing the Post Office in seeking certification for the route in question as an alternative route between Buffalo and Washington is the fact that the mileage on route 34 is 352 miles, while the mileage between Buffalo and Pittsburgh is 218 miles. If the latter route is certificated the only expense to the Government in the form of air mail compensation would be for the 218 miles between Pittsburgh and Buffalo. There are now seven round trips a day operated on route 14 between Washington and Pittsburgh and no additional schedules would have to be provided on that route in order to handle the Buffalo mail. On the basis of the present mail rate for route 34 an additional round trip schedule between Buffalo and Washington via Williamsport would cost $22,000 a year more than a schedule of one round trip a day between Pittsburgh and Buffalo. The present 38-cent rate for route 34 was fixed by the Authority in the light of operating results showing an average passenger load on that route of

2.43 persons and an average per mile system cost of 51.67 cents. As opposed to these facts, we have the situation on the Pittsburgh-Buffalo route where at the present time the average load is four passengers per trip. The applicant estimates that this average will be increased to six passengers by July of this year, but these figures do not include possible passenger business to be derived from Erie. Using an operating cost of 50 cents a mile on the Pittsburgh-Buffalo route, a much lower mail rate would be indicated for this segment than for route 34. The president of the applicant company estimated that the cost of an additional schedule on route 34 at the present mail rate would be between $75,000 and $80,000 a year, and predicted that the passenger traffic on the Pittsburgh-Buffalo route would be such as to enable applicant to operate two round trips a day on a mail rate of 20 cents per mile, or at a net cost to the Government of much less than would be required to provide an additional schedule on route 34.

These figures are based upon the operation of Boeing 247–D equipment, while the record shows that the applicant intends to operate Douglas DC–3 equipment on at least part of the schedules during this summer. However, the applicant's experience during the first 3 months of operation with the Douglas equipment indicates that the additional operating cost of 12 cents per mile over that of Boeing equipment is more than offset by additional passenger revenue.

The present passenger traffic plus that to be anticipated from the inauguration of the Erie stop, when coupled with the case as made by the applicant and the Post Office Department for the mail certification, seems to establish sufficiently that the public convenience and necessity require the mail certification of the proposed route. This determination is not inconsistent with that which was made in the applicant's mail rate case,[7] for there no final determination of the question of the desirability of the inauguration of mail service on this route was made.

The applicant's long record of successful operation plus its sound financial condition are sufficient to establish its fitness, willingness, and ability to perform the proposed service.

Therefore, we find that the public convenience and necessity require air transportation of persons and property to and from Erie, Pa., as an intermediate point on applicant's existing route between Pittsburgh, Pa., and Buffalo, N. Y.; that the public convenience and necessity require the transportation of mail by aircraft between the terminal points Pittsburgh, Pa., and Buffalo, N. Y., via the intermediate point Erie, Pa.; and that the applicant is fit, willing, and able to perform the proposed service. However, we find that the public convenience and necessity do not require air transportation to and from Youngstown, Ohio, as an intermediate point on applicant's

[7] Supra, note 5.

Pittsburgh-Buffalo route. Accordingly, the certificate of public convenience and necessity heretofore issued to the applicant under section 401 (e) of the act authorizing it to engage in air transportation of persons and property between the terminal points Pittsburgh, Pa., and Buffalo, N. Y., will be amended to authorize the applicant to engage in air transportation of persons, property, and mail between the terminal point Pittsburgh, Pa., the intermediate point Erie, Pa., and the terminal point Buffalo, N. Y.

An appropriate order will be entered.

Branch, Ryan, Mason, Warner, Members of the Authority, concurred in the above opinion. Hinckley, Chairman, did not take part in the decision.

ORDER

Pennsylvania-Central Airlines Corporation having filed applications under section 401 (h) of the Civil Aeronautics Act of 1938 for an amendment to its certificate of public convenience and necessity for its Pittsburgh-Buffalo route; the Acting Postmaster General having certified to the Authority, pursuant to section 401 (n) of the Civil Aeronautics Act of 1938, that the needs of the Postal Service require the transportation of mail between Pittsburgh, Pa., and Buffalo, N. Y., by way of Youngstown, Ohio, and Erie, Pa., in addition to the transportation of mail now authorized in certificates of public convenience and necessity currently effective; the applications and certification having been consoli-

dated into one proceeding; a full hearing thereon having been held; and the Authority, upon consideration of the record in said proceeding, having issued its opinion containing its findings of fact, conclusions and decisions, which is attached hereto and made a part hereof, and finding that its action in this matter is necessary pursuant to said opinion;

IT IS ORDERED that the certificate of public convenience and necessity authorizing Pennsylvania-Central Airlines Corporation, subject to the provisions of said certificate, to engage in air transportation with respect to persons and property between the terminal points Pittsburgh, Pa., and Buffalo, N. Y., be amended so as to authorize Pennsylvania-Central Airlines Corporation, subject to the provisions of said certificate, to engage in air transportation with respect to persons, property and mail between the terminal point Pittsburgh, Pa., the intermediate point Erie, Pa., and the terminal point Buffalo, N. Y.

IT IS FURTHER ORDERED that the exercise of the privileges granted by said certificate shall be subject to the terms, conditions and limitations prescribed by section 238.3 of the economic regulations of the Authority, all amendments thereto, and such other terms, conditions and limitations as may from time to time be prescribed by the Authority.

IT IS FURTHER ORDERED that the said certificate, as amended, shall be issued in the form attached hereto and shall be signed on behalf of the Authority by the Chairman of the Authority and shall have affixed thereto the seal of the Authority attested by the secretary. Said certificate, as amended, shall be effective from the 28th day of June 1940.

IT IS FURTHER ORDERED that so much of the applications and certifications as seek the designation of Youngstown, Ohio, as an intermediate point on the applicant's Pittsburgh-Buffalo route be denied.

U. S. GOVERNMENT PRINTING OFFICE: 1940